

how they affected Widener’s evaluation of Sullivan’s job performance in the months immediately preceding his notice of demotion. A reasonable jury, on this record, could conclude that Sullivan was subject to numerous false complaints and accusations that had a negative impact on Widener’s evaluation of his job performance during the period immediately preceding its decision to demote Sullivan. See Clowes, 991 F.2d at 1162 (noting that an unsatisfactory job evaluation can suggest constructive discharge); cf. Durando v. Trustees of the Univ. of Pa., No. 21-756, 2022 WL 2953686, at *3-5 (E.D. Pa. July 26, 2022) (Beetlestone, J.) (denying summary judgment on constructive discharge in the context of various retaliation claims, given the “facts paint the picture of a rapidly deteriorating environment,” to include multiple criticisms of plaintiff’s job performance).

Second, Sullivan testified that, at the August 28, 2019 meeting between him and Baker, in the context of informing Sullivan of the demotion, Baker told Sullivan that he was “getting old” and “could not work much longer,” and that Widener was “moving in a new direction.” See supra Section I(C) (citing Pl.’s Counterstatement ¶ 15). Baker adamantly disputes that he made these statements. See Def.’s Resp. to Pl.’s Counterstatement ¶ 15. But taking these statements as true, which the Court must do at summary judgment, a reasonable jury could find that Baker encouraged Sullivan to retire. See Clowes, 991 F.2d at 1162 (citing an employer encouraging resignation as suggestive of constructive discharge); cf. Angelopoulos v. HDR Eng’g, Inc., No. 19-01578, 2021 WL 3056205, at *3-4, 11 (W.D. Pa. July 20, 2021) (denying summary judgment as to constructive discharge in part on the ground that he was never subjected to “age-based comments”); Jacoby v. Arkema Inc., No. 06-2339, 2007 WL 2955593, at *14 (E.D. Pa. Oct. 9, 2007) (Yohn, J.) (granting summary judgment on plaintiff’s ADEA and PHRA claims on the ground that there was no genuine dispute of material fact as to constructive discharge, finding, inter alia, that the employer

never told plaintiff that “he was too old to do his job”). That Baker told Sullivan, a week after the August 28, 2019 meeting at which time Sullivan informed Baker of his intent to retire, that he wished Sullivan would stay or that Sullivan assisted with drafting his retirement letter—facts neither party disputes—do not nullify the effect of Baker’s August 28, 2019 statements on Sullivan’s decision that he had no choice but to retire. See, e.g., Reply Br. 5; see supra Section I(C) (citing Def.’s SUF ¶ 5).

Widener’s suggestion that Sullivan never experienced a reduction in pay or benefits, nor had his title changed, and therefore could not argue that he was involuntarily transferred to a new position, is not persuasive at summary judgment. This argument is potentially common to any constructive discharge claim where an employee feels compelled to retire after being given a notice of demotion but leaves prior to any paperwork effectuating the change is filed. These is potentially common to any constructive discharge claim where an employee feels compelled to retire after “being forced out,” and they do not, without more, support granting summary judgment in the favor of an ADEA defendant. See Resp. 10.

Additionally, while the test for constructive discharge is objective and does not account for Sullivan’s “embarrassment” at being demoted, see Mandel, 706 F.3d at 169, the fabricated complaints and accusations, as well as Baker’s August 28, 2019 statements, if true, amount to a work environment so intolerable that a reasonable person would feel compelled to resign. Contrary to the court’s finding in Abror that plaintiff’s experience—to include feelings of anxiety and crying, an increased workload, poor evaluations, lack of updated equipment, and a failure to complete assignments—was not so intolerable that a reasonable person would be compelled to resign, this record suggests that Sullivan’s experience was far from the “ordinary work experience

for millions of average citizen.” Abror v. Dep’t of Labor & Indus. Off. of Vocational Rehabilitation, No. 17-2221, 2019 WL 2716087, at *5 (M.D. Pa. June 28, 2019).

To be sure, a reasonable jury could conclude that the facts do not support Sullivan’s account of the events leading to his retirement—for example, by finding that Baker never told Sullivan that He was “getting old.” But if a jury credited Sullivan’s version of events based on this record, then Widener “permitted conditions so unpleasant or difficult that a reasonable person would have felt compelled to [retire]” and Sullivan suffered an adverse employment action in the form of constructive discharge. Duffy, 265 F.3d at 167 (internal quotations omitted). Thus, there are genuine disputes of material fact for a jury to resolve, hereby precluding summary judgment.

C. Damages

Widener argues summary judgment is proper on the ground that Sullivan has no damages. According to Widener, neither Sullivan’s salary nor benefits were ever reduced, and Sullivan did not make a satisfactory attempt to mitigate damages, nor is there evidence of a willful violation supporting an award of liquidated damages.

For claims arising under the ADEA, the question of monetary liability arises after resolution on the question of fault. See Caufield v. Ctr. Area Sch. Dist., 133 F. App’x 4, 10 (3d Cir. 2005) (citing Anastasio v. Schering Corp., 838 F.2d 701, 709 (3d Cir. 1988)). Additionally, “[w]hether or not a claimant has met his duty to mitigate damages is a determination of fact.” Booker v. Taylor Milk Co., Inc., 64 F.3d 860, 864 (3d Cir. 1995); see also Caufield, 133 F. App’x at 9-10 (emphasizing that mitigation is not an essential element of an ADEA or PHRA claim, and a failure to mitigate damages “has no bearing on whether or not a claim for discrimination can be proven”); Giedgowd v. Cafaro Grp., LLC, No. 20-6184, 2021 WL 4963533, at *10 (E.D. Pa. Oct. 26, 2021) (Kearney, J.) (“[W]hether a plaintiff has met the duty to mitigate damages is a question

of fact, and therefore properly reserved for the jury where there is a genuine dispute of material over plaintiff's mitigation efforts.") (quoting Ngai v. Urban Outfitters, Inc., No. 19-1480, 2021 WL 1175155, at *20 (E.D. Pa. Mar. 29, 2021) (Beetlestone, J.)). Likewise, as discussed in supra Section IV(B)(2), there are genuine disputes of material fact as to the extent of Widener's participation in the so-called false complaints and accusations brought against Sullivan in the months immediately preceding his notice of demotion, and as to whether Baker actively encouraged Sullivan to retire by making comments during the August 28, 2019 meeting about Sullivan's age. Likewise, the availability of liquidated damages is a question of fact for a jury and premature to support a finding of summary judgment. See Clark v. France Compressors Products, Div. of Garlock, Inc., 694 F. Supp. 112, 116-17 (E.D. Pa. 1988) (Kelly, J.); Zulauf v. Stockton Uni., No. 15-3526, 2017 WL 700111, at *11 (D.N.J. Feb. 22, 2017).

V. Conclusion

For the foregoing reasons, Defendant's motion for summary judgment is denied. An appropriate order follows.

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Applicant Details

First Name **Mylon**
 Middle Initial **D**
 Last Name **Smith**
 Citizenship Status **U. S. Citizen**
 Email Address msmith170111@gmail.com

Address	Address Street 3913 24th Ave SE Apt. 8 City Norman State/Territory Oklahoma Zip 73071 Country United States
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Contact Phone Number **405-313-1811**

Applicant Education

BA/BS From **University of Central Oklahoma**
 Date of BA/BS **May 2019**
 JD/LLB From **University of Oklahoma College of Law**
<http://law.ou.edu>
 Date of JD/LLB **May 14, 2023**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **Oil and Gas, Natural Resources, and Energy Journal**
 Moot Court Experience **Yes**
 Moot Court Name(s) **SWBLSA Thurgood Marshall Moot Court Competition 2022-2023**
NBLSA Thurgood Marshall Moot Court Competition 2022-2023
SWBLSA Thurgood Marshall Moot Court Competition 2021-2022

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Just the Beginning Organization**

Recommenders

Pearl, Alexander
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Mortazavi, Melissa
melissa.mortazavi@ou.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Mylon D. Smith
3913 24th Ave SE Apt. 8
Norman, OK 73071

June 7, 2023

The Honorable Judge Juan R. Sánchez
14613 United States Courthouse
Philadelphia, PA 19106

Dear Judge Sánchez:

Please accept this letter as an application for a clerkship in your chambers for the 2024-2025 term. I am a recent graduate of the University of Oklahoma College of Law. I am sitting for the Oklahoma bar examination in July 2023. I have accepted a litigation associate position with Crowe & Dunlevy's Oklahoma City office which I will start in September 2023 (pending bar examination results). Therefore, I will have a year of legal work experience if I am selected for your chambers. I am interested in clerking in your chambers because I plan on eventually moving to Philadelphia.

Attached for your review are my resume, law school transcript, undergraduate transcript, letters of recommendations, and writing sample. My writing sample is a draft of a reply brief that I wrote during my summer internship with Crowe & Dunlevy. The draft is wholly my work product. The draft is a reply to a plaintiff's response to a motion to dismiss fraudulent transfer claims brought against the client.

My letters of recommendation are from Professor M. Alexander Pearl (510-684-7636), and Dean Melissa M. Mortazavi (510-290-8155).

Please let me know if I can provide any additional information. I can be reached by phone at 405-313-1811 or by email at msmith170111@gmail.com. Thank you very much for considering my application.

Respectfully,
Mylon D. Smith

MYLON D. SMITH

3913 24th Ave SE, Apt. 8 • Norman, OK 73071 • (405) 313-1811 • msmith170111@gmail.com

EDUCATION

University of Oklahoma College of Law

Norman, OK

Juris Doctor

May 2023

GPA | Rank: 3.68 (converted from 12-point GPA scale) | 17/168 (Top 10%)

Honors: Order of Barristers

Dean's Honor Roll – 5 Semesters

Thurgood Marshall Moot Court Competition 2022-2023 – Third Place (National

Competition); Thurgood Marshall Moot Court Competition 2022-2023 – Runner-Up

(Southwest Region); Thurgood Marshall Moot Court Competition 2021-2022 - Best Brief Award (Southwest Region)

Judge Wayne Alley Advocacy Award 2021-2022 (Awarded to one competition brief that is selected from all school competition teams that have won brief awards at their respective Moot Court competitions)

OU Law 1L Moot Court Competition – Distinguished Speaker Award

Crowe and Dunlevy Diversity Scholar

Activities: Oil and Gas, Natural Resources, and Energy Journal (One-J), Article Editor (2022-2023)
Head Student Mentor (2022-2023)

Black Law Students Association, Alumni Relations Chair (2022-2023)

University of Central Oklahoma

Edmond, OK

Bachelor of Arts in Political Science

May 2019

Honors: Pi Sigma Alpha (Political Science Honorary Society)

Thesis: "China's Rise and the Fate of Democracy"

WORK EXPERIENCE

GableGotwals

Oklahoma City, OK

Summer Associate

Summer 2021 & 2022

Researched and drafted legal memoranda in the areas of oil and gas, bankruptcy, labor and employment, and insurance. Observed scheduling conference in federal court. Observed sentencing of criminal defendant in federal court.

Crowe & Dunlevy

Oklahoma City, OK

Summer Associate

Summer 2021 & 2022

Drafted reply brief in support of client's motion to dismiss a fraudulent transfer claim. Drafted discovery requests in a Chapter Seven bankruptcy proceeding. Researched and drafted legal memoranda in the areas of health law, cybersecurity, commercial law, professional ethics, environmental law, antitrust, labor and employment, and remedies. Drafted loan agreement for credit extension for client. Observed depositions.

Fish City Grill

Edmond, OK

Bartender/Server

October 2017 – June 2020

ADDITIONAL INFORMATION

Community Service: American Cancer Society, Legislative Ambassador (2022-2023). Traveled to Houston in 2017 in the wake of Hurricane Harvey to assist with cleanup and recovery efforts.

Interests: Half-marathons, cycling, playing chess, reading mystery novels, and DVD collecting.

THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW

OFFICE OF ADMISSIONS AND RECORDS

NAME (LAST, FIRST MIDDLE)
Smith, Mylon D

SOONER ID
113048426

SEX
M

Student
Record

PRINT DATE
06/06/2023

BIRTH DATE
03/23/1996

COURSE TITLE			DEPT.	NO.	HRS.	GRADE		COURSE TITLE			DEPT.	NO.	HRS.	GRADE
Fall 2020							INTERPRETATION OF GRADES I = Incomplete AW = Admin. Withdrawal W = Withdrawn S = Satisfactory U = Unsatisfactory AU = Audit N = No Report	Litigation Skills			LAW	6400	3	A
Civil Procedure I			LAW	5103	3	A		Health Data Confid./Security			LAW	6100	3	A
Research/Writing & Analysis I			LAW	5123	3	B-		TERM: GPH: 12 GPS: 126 HA: 12 HE: 12 GPA: 10.5						
Torts			LAW	5144	4	A-		Spring 2023						
Property			LAW	5234	4	A		Crim Pro: Investigation			LAW	5303	3	A-
Legal Foundations			LAW	6100	1	S		Federal Courts			LAW	5543	3	A-
TERM: GPH: 14 GPS: 138 HA: 15 HE: 15 GPA: 9.857								Federal Indian Law			LAW	5610	3	A-
Spring 2021							GRADE POINTS PER SEM. HOUR A+ = 12 C+ = 6 A = 11 C = 5 A- = 10 C- = 4 B+ = 9 D+ = 3 B = 8 D = 2 B- = 7 D- = 1 F = 0	Selected Issues Antitrust Prac			LAW	6100	3	B
Contracts			LAW	5114	4	A		Competitions			LAW	6321	1	S
Constitutional Law			LAW	5134	4	A-		Trial Techniques			LAW	6410	3	A-
Intro to Brief Writing			LAW	5201	1	B+		TERM: GPH: 15 GPS: 144 HA: 16 HE: 16 GPA: 9.6						
Civil Procedure II			LAW	5203	3	B		OU CUM: GPH: 85 GPS: 855 HA: 90 HE: 90 GPA: 10.059						
Criminal Law			LAW	5223	3	A-								
Oral Advocacy			LAW	5301	1	A								
TERM: GPH: 16 GPS: 158 HA: 16 HE: 16 GPA: 9.875														
Fall 2021						 END OF RECORD							
Evidence			LAW	5314	4	A-								
The First Amendment			LAW	5450	3	A								
Unincorporated Entities			LAW	5733	3	B+								
International Law Foundations			LAW	6060	3	A								
ONE J			LAW	6331	1	S								
TERM: GPH: 13 GPS: 133 HA: 14 HE: 14 GPA: 10.231														
Spring 2022							FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT - 1974 - THIS RECORD IS RELEASED ON THE CONDITION THAT THE STUDENT INFORMATION CONTAINED THEREIN WILL NOT BE TRANS- FERRED TO A THIRD PARTY WITHOUT THE WRITTEN CONSENT OF THE STUDENT.							
Professional Responsibility			LAW	5323	3	A-								
Administrative Law			LAW	5403	3	A								
Bankruptcy			LAW	5410	3	A-								
Health Care Access/Qual/Liab			LAW	6100	3	A								
Statutory Interpretation			LAW	6100	3	A-								
Competitions			LAW	6321	1	S								
ONE J			LAW	6331	1	S								
TERM: GPH: 15 GPS: 156 HA: 17 HE: 17 GPA: 10.4														
Fall 2022														
Secured Transactions			LAW	5750	3	A-								
Equality Rights/Amer Con Law			LAW	6100	3	A-								

ELECTRONIC VERSION



Dean and Director of the Law Center

This official transcript is printed on burgundy security paper and signed in DUPLICATE (pre-printed signature in white ink and laser produced identical signature in black ink) on each page by the Dean of the University of Oklahoma College of Law, Andrew M. Coats. A raised seal is not required. When photocopied, the word COPY should appear. A BLACK AND WHITE OR COLOR COPY OF THIS TRANSCRIPT SHOULD NOT BE ACCEPTED.

Joseph H. Hargis



THIS DOCUMENT REFLECTS ONLY THE ACADEMIC RECORD OF THE STUDENT AT THE COLLEGE OF LAW.



The UNIVERSITY of OKLAHOMA®
College of Law

June 12, 2023

The Honorable Juan Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Recommendation for Mylon Smith

Dear Judge Sanchez,

I am writing in enthusiastic support of the candidacy of Mr. Mylon Smith. Mr. Smith is a thoughtful and well-prepared student, with a combination of being a thoughtful, close reader, an intellectually engaged student, and a humble and generous member of the OU Law community. I have the pleasure of not only teaching him in my Administrative Law and Professional Responsibility courses but interacting with him extensively through BLSA in my capacity as BLSA faculty advisor and now as Dean.

In Professional Responsibility and Administrative Law, Mr. Smith was consistently prepared and asked insightful questions. In Professional Responsibility, we often probe the meaning of legal practice and the complex myriad of duties that lawyers must learn to carefully navigate. Mr. Smith is not one to volunteer his thoughts generally—but when called on, his ideas clarified a doctrinal point or meaningfully added a needed perspective to our classroom discussion that enriched the entire classroom experience. Administrative Law is a difficult class, and many people drop the course in the add/drop period. Mr. Smith also excelled in this space where he demonstrated mastery of difficult and complex material and performed well on the final exam.

I have not had an extensive opportunity to evaluate Mr. Smith's writing, however, what I have seen on his exams was very good. The flow of the writing followed a natural progression through blackletter doctrine to factual analysis. This was all under a tight time limitation.


Mr. Smith is also a leader in the OU Law community. His work with BLSA, to integrate alumni and connect them to students, has been instrumental in the national recognition of the Chapter. He is also a College of Law 1L Mentor where he helps guide first year students through the multitude of challenges that the transition to law school provides. He is generous with his time and often participates in panel discussion and other student-oriented activities. Not only is he a team player who is both organized and thoughtful, he is a student devoted to making the law a more equitable and just system.

Andrew M. Coats Hall, 300 Timberdell Road, Norman, Oklahoma 73019-5081, PHONE: (405) 325-4699
WEBSITE: LAW.OU.EDU



It is without reservation that I recommend Mr. Mylon Smith to a position in your chambers. I have no doubt that you will find him to be insightful, diligent, and hardworking. If I can provide any additional information to you, I hope you will be in touch.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa Mortazavi', with a stylized, sweeping flourish at the end.

Melissa Mortazavi
Associate Dean of Academic Affairs
Second Century Presidential Professor of Law
The University of Oklahoma College of Law
300 Timberdell Road
Norman, OK 73019
melissa.mortazavi@ou.edu
Cell: 510. 290. 8155

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

AMERICAN SOUTHWEST MORTGAGE FUNDING CORP.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CH-2021-1680
)	Judge Anthony L. Bonner
FIRST MORTGAGE COMPANY, LLC, et al.,)	
)	
Defendant.)	

**DEFENDANT PHIL THOMPSON’S REPLY TO PLAINTIFF’S RESPONSE TO
DEFENDANT PHIL THOMPSON’S PARTIAL MOTION TO DISMISS**

Plaintiff’s fraudulent transfers claim against Phil Thompson (“Mr. Thompson”) are extinguished by the Oklahoma Uniform Fraudulent Transfers Act (“OUFTA” or “the Act”). Under OUFTA, a fraudulent transfer claim is *extinguished* unless it is brought “within four (4) years after the transfer was made or the obligation was incurred or, if later, within one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant.” 24 O.S. § 121(1). Plaintiff’s fraudulent transfer claim was not brought in either time period. Thus, Plaintiff’s fraudulent transfer claims against Mr. Thompson are *extinguished* per OUFTA.

Plaintiff alleges that a mortgage and note executed to Mr. Thompson is a fraudulent transfer. However, Plaintiff fails to mention the date that the mortgage and note were executed on in both its First Amended Petition and Response to Mr. Thompson’s motion. Perhaps this is because Plaintiff recognizes that this date is the weak link in its fraudulent transfer lawsuit against Mr. Thompson. The only mortgage that the Plaintiff could be referring to is the disputed mortgage in the consolidated sister case, CJ-2021-2004. (*see* CJ-2021-2004, First Amended Petition at ¶ 53, discussing a mortgage between RonnyMac, LLC and Mr. Thompson). Paragraph 53 of the First

Amended Petition in that case provides that the disputed mortgage was executed on February 19, 2015. Yet Plaintiff's lawsuit against Mr. Thompson was not filed until April 2021, *six years* after the execution of the mortgage and the note. Per OUFTA, Plaintiff's lawsuit needed to be filed by February 19, 2019, to not be extinguished. But it was not. Because Plaintiff's claim was not filed within four years of February 19, 2015, Plaintiff's claim was extinguished by OUFTA unless the mortgage and note were not reasonably discoverable until later. However, the mortgage and note could easily have been discovered by Plaintiff because they were dutifully recorded and made a matter of public record.

In Oklahoma, dismissal is appropriate when "the face of the petition shows beyond doubt the action is time-barred under the applicable statute of limitations." *Moneypenny v. Dawson*, 2006 OK 53, ¶ 2, 141 P.3d 549, 551. Plaintiff attempts to save its claim from dismissal by relying on facts that were added to its Response that were not contained within its original petition. Pl.'s First Am. Pet. at ¶1-40 (Plaintiff makes no allegations that there was no consideration tendered for the mortgage or that the note underlying the mortgage was nonexistent.) Thus, even with all facts and reasonable inferences taken in its favor, Plaintiff's fraudulent transfer claims related to the mortgage, the note, and any payments made thereon were *extinguished* and should be dismissed accordingly.

I. Plaintiff did not file its claim within the applicable time period for a Fraudulent Transfer Claim under OUFTA.

The only time periods relevant for determining whether the Plaintiff's fraudulent transfer claims survive dismissal are (1) four years from when the mortgage and note was executed, and (2) when the mortgage and note could have been reasonably discovered by the Plaintiff.

Plaintiff's assertion that a fraudulent transfer claim does not accrue until the date a judgment is entered comes from misplaced reliance on *Eskridge v. Nalls*, 1993 OK CIV APP 66, 852 P.2d 818 and *Boatright Fam. LLC v. Rsv. Ctr, Inc.*, 2014 U.S. Dist. LEXIS 142447, at *15 (W.D. Okla. Oct. 7, 2014). The Northern District of Oklahoma has pointed out that *Eskridge's* holding is unpersuasive because the court "explicitly did not consider the applicability of the 1986 Fraudulent Conveyances Act [OUFTA]" to the fraudulent conveyances in that case. *Floyd v. B.P. p.l.c.*, No. 21-CV-00132-GKF-CDL, 2021 WL 6064037, at *8 (N.D. Okla. Dec. 22, 2021) (quoting *Eskridge*, at 820-21)). Thus, *Eskridge* is not illustrative of the proper application of OUFTA's time bar provision because the *Eskridge* court was applying a completely different statute of limitations that existed prior to OUFTA's adoption in 1986.

Furthermore, multiple courts interpreting their states' equivalents to OUFTA have found that the statute is a statute of repose. *First Sw. Fin. Servs. v. Pulliam*, 912 P.2d 828, 830 (N.M. Ct. App. 1996) (applying the nearly identical statute of repose from New Mexico's UFTA); *McGregor v. Fowler White Burnett, P.A.*, 332 So. 3d 481, 489 (Fla. Dist. Ct. App. 2021) (applying the nearly identical statute of repose from Florida's UFTA); *see also Nathan v. Whittington*, 408 S.W.3d 870, 874 (Tex. 2013) ("[W]e agree with the parties and the court of appeals in this case that it is a statute of repose, rather than a statute of limitations.") (applying the nearly identical statute of repose from Texas's UFTA). Even *SASCO 1997 NI, LLC v. Zudkewich*, 767 A.2d 469, 474 (N.J. 2001), the authority which Plaintiff relies on to supports its interpretation of OUFTA's time bar provision held that its state's nearly identical UFTA "provides that the four-year provision runs from the date the transfer was made." (internal quotation mark omitted).

II. Plaintiff could have reasonably discovered the mortgage and note a year or less within the filing of its Petition.

The Plaintiff must show that the mortgage and note could not have been reasonably discovered until later to take advantage of the one-year discovery rule. In Oklahoma “a party must be presumed to know what, by the exercise of reasonable diligence, he might have discovered.” *Calvert v. Swinford*, 2016 OK 100, ¶ 18, 382 P.3d 1028, 1035-36. “The discovery rule defers the accrual of a cause of action until the plaintiff knew or, through the exercise of reasonable diligence, should have known of the facts giving rise to the action.” *Cadle Co. v. Wilson*, 136 S.W.3d 345 (Tex. App. 2004) (“The supreme court has limited the application of the discovery rule to circumstances in which the nature of the injury is inherently undiscoverable and the evidence of the injury is objectively verifiable.”) (interpreting the nearly identical one-year discovery rule provision of the Texas UFTA).

When a transaction like the mortgage in this case is a matter of public record, “either through conveyances registered as required by law or through other means, so that the party complaining has abundant means of finding out the fact of the transaction and its nature, there can be no concealment, and he will be charged with notice of the transaction and of facts which a diligent investigation thereof would develop.” *Calvert*, at ¶ 18, 1035-36. Plaintiff could have discovered the mortgage if it had performed a reasonably diligent investigation. However, the Plaintiff did not. Because the mortgage was a matter of public record, it was not undiscoverable. Therefore, Plaintiff cannot take advantage of the one-year discovery rule when it did not even put in the minimal effort it would have taken to discover the mortgage.

“The statute of repose operates to bar some plaintiffs’ recovery, no matter how diligent they may have been in asserting their claims.” *Reynolds v. Porter*, 1988 OK 88, n. 9, 760 P.2d 816, 820 (quoting *Smith v. Westinghouse Elec. Corp.*, 1987 OK 3, 732 P.2d 466); *see also Cadle Co.*, 136 S.W.3d at 350 (“A statute of repose creates a substantive right to be free from liability after a legislatively determined period.”) Furthermore, limitations like a statute of repose are “a legislative expression of a policy that prohibits litigants from raising claims after the expiration of a given period of time.” Exceptions to a statute of repose are to be “strictly construed” and “should not be enlarged on consideration of apparent hardship or inconvenience.” *Calvert*, 382 P.3d at 1032-33. Extinguished claims like the Plaintiff’s should not be permitted to be raised from the grave like specters to haunt defendants and disturb their peace whenever litigants do not exercise reasonable diligence to support their claims.

III. Oklahoma’s “Savings” statute does not save Plaintiff’s claim

In Oklahoma, the general rule regarding § 100 is “that the second suit must allege substantially the same cause of action and feature substantially the same parties as the first suit.” *Nusbaum v. Knobbe*, 2001 OK CIV APP 52, ¶ 13, 23 P.3d 302, 305 (citing *Clark v. Phillips Petroleum Co.*, 1984 OK CIV APP 6, ¶16-18, 677 P.2d 1092). Plaintiff’s fraudulent transfer claim does not feature substantially the same parties as the first suit filed against McCord and FMC because Mr. Thompson was not even a party to that suit. Therefore, § 100 is inapplicable here and should not be permitted to be utilized by the Plaintiff as a last-ditch effort to save its claims against Mr. Thompson.

CONCLUSION

Defendant Phil Thompson respectfully asks this court to dismiss any fraudulent transfers claims by the Plaintiff that are based on the mortgage or any payments on the note secured by the mortgage. Furthermore, Mr. Thompson respectfully requests that he be reimbursed for the reasonable attorney fees and costs incurred in defending against the Plaintiff's claims.

Applicant Details

First Name	Nicholas		
Last Name	Smith		
Citizenship Status	U. S. Citizen		
Email Address	nbsmith@uchicago.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 5105 S Harper Ave, Unit 0512 City Chicago State/Territory Illinois Zip 60615 Country United States </td> </tr> </table>	Address	Street 5105 S Harper Ave, Unit 0512 City Chicago State/Territory Illinois Zip 60615 Country United States
Address			
Street 5105 S Harper Ave, Unit 0512 City Chicago State/Territory Illinois Zip 60615 Country United States			
Contact Phone Number	443-742-5619		

Applicant Education

BA/BS From	Brown University
Date of BA/BS	May 2021
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 1, 2024
Class Rank	School does not rank
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	Hinton Moot Court

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	No
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Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Casey, Anthony
ajcasey@uchicago.edu
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

NICHOLAS SMITH

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The Honorable Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613, Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez,

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2024 term. As someone who hopes to build a career as a public interest lawyer, I can think of no better form of preparation for that career path than direct mentorship from a like-minded judge who values service as highly as I do.

I have known since before starting law school that I ultimately want to pursue a career in public interest work and have actively sought as wide a variety of such experiences as possible—first at the U.S. Attorney’s Office for the Eastern District of New York in Brooklyn, then at my law school’s Criminal and Juvenile Justice Clinic, and currently as a Consumer Protection intern at Legal Aid Chicago. In each job, I’ve found the most fulfillment when mastering a complex statutory scheme or factual record, then clearly conveying the essential information to my audience. At the prosecutor’s office, this included explaining to my bosses when death threats against a witness were admissible under the Federal Rules of Evidence. At the defense clinic, on the other hand, this meant combing through hours of body camera footage so I could show a judge the moment when our indigent client suffered a Fifth Amendment violation. As your judicial clerk, I would take this same passionate approach to fulfilling my professional assignments, not only to assist you, but also to serve the advocates, parties, and broader legal community who seek judicial clarification of the law.

I also believe that my previous professional experience as a literary translator has prepared me well for the demands of clerking. Translating both competitively and professionally has required me to develop writing skills, precise attention to detail, and the ability to communicate the ideas of others thoughtfully and effectively. More than anything else, it has taught me that agonizing for hours over relatively few words—whether in a poem, a brief, or a judicial opinion—makes a world of difference to one’s audience. As a judicial clerk, I will bring this same detail-oriented mindset to whatever task I am assigned.

A resume, transcript, and writing sample are enclosed. Letters of recommendation from Professors Baird and Casey will arrive separately. Given my lack of postgraduate legal work experience, I have also included an additional letter from my clinical professor, Professor Conyers, as a source of information about my workstyle. Thank you for your consideration.

Sincerely,
/s/ Nicholas Smith
Nicholas Smith

NICHOLAS SMITH

5105 S. Harper Ave, Unit 0512, Chicago IL 60615 | (443) 742-5619 | nbsmith@uchicago.edu

EDUCATION

The University of Chicago Law School, Chicago, IL

J.D. Candidate, June 2024

Honors: Rubenstein Scholarship (full-tuition merit scholarship)

Activities: Criminal and Juvenile Justice Clinic; Moot Court; First Generation Professionals (board member); Chicago Law Foundation (board member)

Brown University, Providence, RI

B.A., *magna cum laude*, in East Asian Studies and Comparative Literature, May 2021

Honors: Phi Beta Kappa; Rosalie Colie Prize for Best Undergraduate Thesis in Comparative Literature (for translation of an Arabic murder mystery); 1st Prize, American Association for Teachers of Arabic National Translation Contest; Grand Prize, Brown University Chinese Speech Competition (Intermediate Level)

Study abroad: Tsinghua University in Beijing, China

EXPERIENCE

Legal Aid Chicago (Consumer Group), Chicago, IL

Intern, Summer 2023

- Researched and advised low-income Chicago residents on matters including bankruptcy, foreclosure, landlord-tenant disputes, predatory lending, and consumer fraud
- Performed intake and interviewing of potential Legal Aid Chicago clients

United States Department of Justice, Eastern District of New York, Brooklyn, NY

Intern, Summer 2022

- Researched and wrote complete sections of motions arguing Fourth and Fifth Amendment issues on behalf of the federal government, in criminal prosecutions involving multinational narcotics conspiracies (*United States v. Garcia Luna*) and child trafficking
- Argued in federal court before a judge on behalf of the government at guilty plea and sentencing hearings

The University of Chicago Law School, Chicago, IL

Research Assistant, Summers 2021 and 2022

- Performed legal research and analysis for Professor Eric Posner on the intersection between antitrust law and labor markets, and the intersection between antitrust law and consumer protection
- Aided Professor Adam Chilton in his research by examining international labor treaties in Arabic, translating them, and summarizing them for quick reference by non-Arabic speakers

FT Culture Co., LTD., Beijing, China

Translator, 2020-2022

- Translated four official comic book adaptations based on the work of internationally renowned science-fiction author Liu Cixin (distributed domestically by Simon & Schuster)

AWARDS, LANGUAGES, AND INTERESTS

Fluencies: Mandarin Chinese, Modern Standard Arabic, Classical Arabic

Interests: Marathon running; bass guitar

NICHOLAS SMITH

5105 S. Harper Ave, Unit 0512, Chicago IL 60615 | (443) 742-5619 | nbsmith@uchicago.edu

Two brief notes on the attached transcript:

First, as I am still an active student in Professor Conyers' Criminal and Juvenile Justice Clinic, I have not yet received a grade for this year's participation in the clinic. I will not receive one until graduating from law school in June 2024. The transcript reflects this.

Second, my independent bankruptcy research project with Professor Casey will not conclude until the end of this summer. I will not receive a grade for the resulting research paper until at least the end of September 2023.



Name: Nicholas Blackburn Smith
Student ID: 12329009

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

Brown University
Providence, Rhode Island
Bachelor of Arts 2021

Beginning of Law School Record

Autumn 2021			Attempted	Earned	Grade
COURSE	DESCRIPTION				
LAWS 30101	Elements of the Law Lior Strahilevitz		3	3	177
LAWS 30211	Civil Procedure Emily Buss		4	4	177
LAWS 30611	Torts Saul Levmore		4	4	177
LAWS 30711	Legal Research and Writing Michael Morse		1	1	180

Winter 2022			Attempted	Earned	Grade
COURSE	DESCRIPTION				
LAWS 30311	Criminal Law Sonja Starr		4	4	181
LAWS 30411	Property Lee Fennell		4	4	182
LAWS 30511	Contracts Eric Posner		4	4	181
LAWS 30711	Legal Research and Writing Michael Morse		1	1	180

Spring 2022			Attempted	Earned	Grade
COURSE	DESCRIPTION				
LAWS 30712	Legal Research, Writing, and Advocacy Michael Morse		2	2	181
LAWS 30713	Transactional Lawyering Douglas Baird		3	3	180
LAWS 43227	Race and Criminal Justice Policy Sonja Starr		3	3	183
LAWS 44201	Legislation and Statutory Interpretation Ryan Doerfler		3	3	179
LAWS 47201	Criminal Procedure I: The Investigative Process John Rappaport		3	3	181

Autumn 2022

COURSE	DESCRIPTION	Attempted	Earned	Grade
LAWS 42201	Secured Transactions Douglas Baird	3	3	179
LAWS 44121	Introductory Income Taxation Julie Roin	3	3	179
LAWS 53271	Intensive Contract Drafting Workshop Emily Underwood Michelle Drake	3	3	178
LAWS 53445	Advanced Criminal Law: Evolving Doctrines in White Collar Litigation Meets Writing Project Requirement	3	3	179
Req Designation:	Thomas Kirsch			
LAWS 90217	Criminal and Juvenile Justice Project Clinic Herschella Conyers	1	0	
LAWS 95030	Moot Court Boot Camp Rebecca Horwitz Madeline Lansky	1	1	P

Winter 2023

COURSE	DESCRIPTION	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	181
LAWS 43234	Bankruptcy and Reorganization: The Federal Bankruptcy Code Anthony Casey	3	3	182
LAWS 43242	Corporate Tax I David A Weisbach	4	4	181
LAWS 45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	177
LAWS 90217	Criminal and Juvenile Justice Project Clinic Herschella Conyers	1	0	

Spring 2023

COURSE	DESCRIPTION	Attempted	Earned	Grade
LAWS 41601	Evidence John Rappaport	3	3	183
LAWS 42801	Antitrust Law Eric Posner	3	3	177
LAWS 47411	Jurisprudence I: Theories of Law and Adjudication Brian Leiter	3	3	175
LAWS 90217	Criminal and Juvenile Justice Project Clinic Herschella Conyers	1	0	
LAWS 93499	Independent Research: Independent Advanced Bankruptcy Research Anthony Casey	3	0	

End of University of Chicago Law School

OFFICIAL ACADEMIC DOCUMENT



Key to Transcripts of Academic Records

1. **Accreditation:** The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. **Calendar & Status:** The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. **Course Information:** Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. **Credits:** The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. **Academic Status and Program of Study:** The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. **Doctoral Residence Status:** Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. **Law School Transcript Key:** The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. **FERPA Re-Disclosure Notice:** In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016

Professor Anthony J. Casey
Deputy Dean, Donald M. Ephraim Professor of Law and Economics,
Faculty Director, The Center on Law and Finance
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
ajcasey@uchicago.edu | 773-702-9578

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to provide my strong recommendation for Nick Smith for a clerkship in your chambers. I had the pleasure of teaching Nick in my Bankruptcy class this winter, where he got one of the highest grades in the class. In and out of class, Nick has consistently displayed exceptional dedication, intellectual ability, and a deep commitment to the study and future practice of law.

Nick's unique background and diverse range of experiences have shaped his legal perspective. His undergraduate degree, obtained *magna cum laude* from Brown University, reflects his passion for East Asian Studies and Comparative Literature. I have no doubt that his linguist studies and translation work in Arabic and Chinese have contributed to his success in law school as both require one to navigate complex linguistic and cultural puzzles.

Beyond his academic and professional achievements, Nick possesses exceptional interpersonal skills and demonstrates a strong commitment to public interest work. He actively participated in the Criminal and Juvenile Justice Clinic, displaying his dedication to advocating for the underprivileged and marginalized. His involvement in organizations such as the First Generation Professionals and the American Constitution Society further exemplifies his commitment to public interest and promoting constitutional principles.

I have no doubt that Nick will be a highly valuable addition to your chambers. His enthusiasm for the law, dedication to excellence, and ability to adapt to diverse situations make him an ideal candidate for any chambers. I recommend Nick with the highest praise.

Please let me know if I can be of further assistance.

Very truly yours,
Anthony J. Casey

Anthony Casey - ajcasey@uchicago.edu - 773-702-9578

June 08, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Recommendation for Nicholas Smith

Dear Judge Sanchez:

I am writing to recommend Nicholas Smith for a clerkship. I am confident that he would be an outstanding clerk. Nick is a smart and conscientious young man and would be an asset to any court.

Nick joined my Criminal & Juvenile Justice Clinic at the University of Chicago Law School in Fall 2022. I have had weekly contact with and observation of Nick through team and individual meetings. I have reviewed his written work of draft motions, memorandum, and witness examinations. All have been excellent.

Nick has worked on several of our most difficult cases. In one case our client is charged with multiple counts of unlawful possession of a firearm. Nick drafted the motion to suppress statements. In preparing to draft the motion, Nick reviewed multiple times the body-camera footage of the police interactions with our client. His appreciation and grasp of the Miranda issues was obvious in his first draft. Nick's structuring of the legal argument was excellent. His writing was clear and concise.

Nick also helped moot 3L students who were preparing to argue the motion in court. His feedback was direct and on the money.

Nick's other work has included working as part of a larger team on a juvenile matter. Our client is charged with aggravated sexual assault. Nick has been meticulous, thoughtful, and timely in contributing to trial strategies, witness' preparations including expert witnesses, client meetings and overall case preparation. I look forward to his continued work on these and other cases in the upcoming school year.

In addition to his direct representation work, Nick has been instrumental in helping me develop a topic proposal for an upcoming article. His thoughtful insights into the pros and cons have helped direct my decisions.

Nick has also been part of a team that tracks legislation and policy issues in juvenile justice. Students attend meetings with speakers, legislators, and other stakeholders. These meetings are presented by the Juvenile Justice Initiative (JJI) and are instrumental in keeping me and the clinic informed and up to date.

Nick's ability to work well with others is outstanding. He actively listens and gives thoughtful feedback which allows discussions to move forward in a positive way.

As I have said, Nick will be returning to the clinic for his 3L year. My expectation is that he will assume even more responsibility and a greater leadership role.

To summarize, I recommend Nicholas Smith without reservation. Please feel free to contact me with any questions or follow-up. My best contact number currently is my cell number: 773.576.5076.

Sincerely,

/s/ Herschella G. Conyers

Herschella G. Conyers
Lillian E. Kramer Clinical Professor of Law
Director: Criminal & Juvenile Justice Clinic

Herschella Conyers - hconyers@uchicago.edu - (773) 576-5076



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www.law.uchicago.edu

Douglas G. Baird
Harry A. Bigelow Distinguished Service Professor of Law

June 10, 2023

The Hon. Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

Nicholas Smith is a remarkably gifted young lawyer, and I welcome the chance to write a letter to you on his behalf as he applies for a clerkship.

A consummate puzzle solver, Mr. Smith was completely at home in my secured transactions class last fall. Mr. Smith finds genuine pleasure in confronting a complicated fact pattern with multiple parties in different jurisdictions claiming priority to the same asset, something that brings terror even to experienced lawyers.

In contrast to many of his generation, Mr. Smith is also a wordsmith. He takes care to find exactly the right word to capture the essence of whatever needs to be described. These skills served him well as a professional translator, and they undergird his remarkable skill at explaining the toughest puzzles that complicated statutory and regulatory regimes present. Hard problems seem much easier once he offers his perspective on them.

In person you will find Mr. Smith low-key and winning, someone keenly interested in everything around him. He prefers complex and interwoven stories to the simple ones. He has the patience, work ethic, and general good nature of someone you want to have at your side in solving a hard problem.

Success will come to Mr. Smith wherever he plys his gifts, and he will be an outstanding law clerk. I can recommend him to you enthusiastically and without reservation.

Sincerely,
Douglas G. Baird

NICHOLAS SMITH

5105 S. Harper Ave, Unit 0512, Chicago IL 60615 | (443) 742-5619 | nbsmith@uchicago.edu

The attached writing sample is a mock Supreme Court opinion that I wrote as the final paper for the course “Advanced Criminal Law: Evolving Doctrines in White Collar Litigation” taught by the Honorable Judge Thomas Kirsch in Autumn 2022.

The assignment was to write a majority and a dissenting opinion in a hypothetical case that addressed the following two questions: 1) whether 18 U.S.C. § 666 requires a *quid pro quo*, and 2) whether the fictional district court appropriately calculated a loss for sentencing enhancement purposes. To create a 13-page writing sample, I included only the portion of the majority opinion discussing to the § 666 issue, and omitted the dissent and the portion of the majority opinion covering the sentencing issue. The facts section is an edited excerpt of the paper prompt, which I included in my submitted final paper. This work is entirely my own and has not been edited by anyone other than myself.

HORAN *v.* UNITED STATES

1

SUPREME COURT OF THE UNITED STATES

 No. 23-415

JAMES L. HORAN, PETITIONER *v.* UNITED STATES.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

February 20, 2023

JUSTICE SMITH delivered the opinion of the Court.

Jim Horan, a city official, helped businessman Nick Simonton win a city contract worth \$10 million. Unbeknownst to the city, Simonton was Horan's friend, and had previously given him over \$300,000 before bidding on the contract. Horan was convicted for federal programs bribery under 18 U.S.C. § 666, and honest services fraud under 18 U.S.C. § 1346. On appeal, Horan contends the prosecution was required to prove a *quid pro quo* at trial to convict him under § 666. Because the language of § 666 is ambiguous and potentially raises serious constitutional and lenity concerns, we agree with Horan that the statute must contain a *quid pro quo* requirement. Accordingly, we VACATE Horan's conviction under § 666 and REMAND for proceedings consistent with this opinion.

I.

In 2010, the city council of Paducah, Kentucky appointed Jim Horan to serve as Commissioner of the city's Fire Department. Throughout Horan's tenure, the Fire Department received at least \$50,000 annually in

federal funds. Concurrent with his government employment, Horan maintained a side job: a catering company called Down Home D-Lites.

During his tenure as Commissioner, Horan befriended Nick Simonton, a local businessman who owned and operated Havis Industries, a distributor of emergency radio systems. Simonton would go on to hire Horan's catering company for several business and personal events, including a company barbecue and an anniversary party for Simonton's parents.

Eventually, the city of Paducah decided to replace its emergency radio network. As Fire Commissioner, Horan immediately recommended Havis Industries (his friend's company) for the job, and the city awarded Havis the contract before ever putting it out for competitors to bid on. At the time of the contract award, some council members were aware of Horan's catering business; none, however, knew of any relationship between Horan and Simonton.

After viewing Horan's bank accounts during an unrelated investigation, the F.B.I. indicted Horan on counts of federal programs bribery under 18 U.S.C. § 666, and honest services fraud under 18 U.S.C. § 1346.

At trial, the government brought evidence that Simonton and Havis (his company) paid Down Home D-Lites more than \$300,000 over time, an amount which constituted more than 85% of Horan's total catering revenue. Simonton and Havis also sometimes paid as much as 200% above market rate for dishes from Horan's business. Moreover, the government showed that in addition to the catering payments, Simonton regularly invited Horan to professional football games and concerts and provided box-seat tickets to these events.

HORAN *v.* UNITED STATES

3

At trial, the jury convicted Horan on all counts. In the district court's jury instructions for the § 666 count, the court did not tell the jury it needed to find a *quid pro quo* to convict Horan.

On appeal, the Sixth Circuit affirmed in full. We granted certiorari to resolve a longstanding circuit split, namely whether 18 U.S.C. § 666 contains an implicit *quid pro quo* requirement.

II.

Whether 18 U.S.C. § 666 requires a *quid pro quo* is the source of much disagreement among the Courts of Appeals. On one side, most of the Circuits have found that the statute contains no such requirement. *See, e.g., United States v. Ganim*, 510 F.3d 134, 150 (2d Cir. 2007); *United States v. Abbey*, 560 F.3d 513, 520 (6th Cir. 2009); *United States v. Agostino*, 132 F.3d 1183, 1195 (7th Cir. 1997); *United States v. Zimmerman*, 509 F.3d 920, 927 (8th Cir. 2007); *United States v. McNair*, 605 F.3d 1152, 1188 (11th Cir. 2010). On the other side of the divide, an opposing contingent has emerged in recent years, advocating that the language of § 666 clearly implies and requires a *quid pro quo*. *See, e.g., United States v. Fernandez*, 722 F.3d 1, 26 (1st Cir. 2013); *United States v. Jennings*, 160 F.3d 1006, 1015 & nn.3–4 (4th Cir. 1998); *United States v. Hamilton*, 46 F.4th 389, 398 (5th Cir., 2022).

For the reasons stated within, we chart something of a middle course between these options in holding that the language of § 666 does not clearly mandate one result or the other. Instead, after viewing the statute in its proper historical and linguistic context, it is clear to us that § 666 is ambiguous. Although any bribery criminalized under the statute clearly requires a *quid pro quo*, § 666's use of the term "rewarded" may also criminalize gratuity, an offense with no such requirement.

However, while this construction of § 666 is ultimately plausible, it would also purport to grant the federal government a degree of punitive authority that raises significant constitutional and lenity concerns. To construe the statute in a way that avoids these issues, we must adopt the narrower construction of the statute, and find that § 666 criminalizes bribery alone. And since this narrower interpretation necessarily entails a *quid pro quo*, we rule in favor of petitioner in finding that § 666 contains a *quid pro quo* requirement.

A.

Because the correct construction of a statute is a pure question of law, our standard of review is *de novo*. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 947, (1995). And as in all questions of statutory interpretation, we begin our analysis of § 666 with the statute's plain text. *Limtiaco v. Camacho*, 549 U.S. 483, 488, (2007). The relevant portions of § 666 read as follows:

(a) Whoever, if the circumstance described in subsection (b) of this section exists—

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—

...

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more;

...

HORAN *v.* UNITED STATES

5

shall be fined under this title, imprisoned not more than 10 years, or both.

- (b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

18 U.S.C. § 666(a)–(b).

As respondent indicates, the words “*quid pro quo*” appear nowhere in § 666’s plain text. Indeed, many of the Courts of Appeals who have found no *quid pro quo* requirement have halted their analyses at this early point. These courts reason that, because the statute does not explicitly mention a *quid pro quo*, it cannot possibly require one. *See, e.g., United States v. Agostino*, 132 F.3d 1183, 1191 (7th Cir. 1997). Although this theory has some appeal, we would be more inclined to adopt it if § 666 had been enacted in isolation, with no strong textual or historical connection to any other statute. However, § 666 does, in fact, share such a connection. It directly grew in large part from a preexisting statute: 18 U.S.C. § 201, the general federal bribery provision. Any attempt to interpret § 666’s requirements will therefore fail if we do not first explore its relationship with § 201.

B.

18 U.S.C. § 201 forbids corruption among “public officials.” Corrupt dealings can fall into one of two categories: bribery under § 201(b), or gratuity under § 201(c). *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999).

In *Sun-Diamond*, we clarified that § 201(b) bribery, with its “intent to influence” language, hinges on a *quid pro quo*, i.e., a direct exchange of illegal payment for corrupt government action. 526 U.S. at 404. Consider, for example, the case of a drug ring that pays mail workers to intercept drug shipments at the post office engages in *quid pro quo* by swapping payment for government action, and thus violates § 201(b). *United States v. Jones*, 993 F.3d 519 (7th Cir. 2021). Gratuity, on the other hand, suggests a unilateral transaction, where an official merely accepts a gift when they should not. In *Jones*, if the drug traffickers had instead sent the postal workers some money without attempting to influence their behavior, they might still have satisfied some elements of a gratuity.¹

For a time, § 201 was the only general bribery provision in the federal criminal code. *Salinas v. United States*, 522 U.S. 52, 58 (1997). Until 1984, some Circuits allowed corruption charges against both federal *and* state government officials under § 201, but we clarified that this practice was error in *Dixson v. United States*, 465 U.S. 482, 499 (1984). Recognizing that it would need another statutory tool to reach corrupt state and local officials, Congress began drafting a new statute before *Dixson* was decided, and enacted § 666 in 1984. *Salinas*, 522 U.S. at 58. While drafting the statute, Congress could have written the text of § 666 wholly from scratch. If it had done so, we would agree with respondent that the statute should be read in relative isolation. But instead, Congress clearly went beyond drawing

¹ Gratuities must meet other requirements to transform from legal gifts into illicit payments, but these are not strictly relevant to our discussion here. For a more thorough explanation, see *Sun-Diamond*, 526 U.S. at 412.

HORAN *v.* UNITED STATES

7

mere *inspiration* from § 201; it drew directly upon § 201's *text*.

When § 666 was enacted, its key language was identical to that of § 201(c), the preexisting gratuity provision. § 666's original text targeted a recipient of federal funds who "accepts...anything of value from a person or organization other than his employer...*for or because* of the recipient's conduct..." Comprehensive Crime Control Act, Pub. L. No. 98-473, § 1104(b), 98 Stat 1837, 2143-44 (1984) (emphasis added). As we explained in *Sun-Diamond*, it is precisely the words "for or because" in § 201(c) that make it a gratuity provision, because they do *not* contemplate a *quid pro quo* exchange, and thus do not cover bribery. 526 U.S. at 404. If § 666 had remained in this form until the present day, it would clearly not require a *quid pro quo*.

Instead, Congress amended § 666 in 1986, and swapped the language resembling § 201(c) for the statute's current language, resembling § 201(b). See Pub. L. No. 99-646, 100 Stat. 3592 (1986). § 666 now requires that an individual convicted under the statute corruptly "accepts... anything of value from any person, *intending to be influenced* or rewarded in connection with any business, transaction, or series of transactions." 18 U.S.C. § 666(a)(1)(B). Again, *Sun-Diamond* clarified that it was these very words – "intending to be influenced" – that create § 201(b)'s *quid pro quo* requirement. 526 U.S. at 404. In short, the amendment to § 666 removed words from the statute that clearly signify a gratuity, and replaced it with words that signify the more stringent *quid pro quo* bribery standard.

Respondent contends that just because words implying a *quid pro quo* were taken from § 201(b) and used in § 666, it does not follow that the *quid pro quo* requirement survived the transfer. But in the timeless words

of Justice Frankfurter, “If a word is obviously transplanted from another legal source...it brings the old soil with it,” Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947). Our goal as interpreters of statutes is to understand their ordinary public meaning. *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1738 (2020). And when Congress takes language that it knows has an established meaning and transplants it elsewhere, it would be foolish to assume the words do not carry the same connotations in their new home. *See, e.g., Hall v. Hall*, 138 S. Ct. 1118, 1128 (2018). Here, Congress took language it knew did *not* signify *quid pro quo*, and then replaced it with language it had previously used when it *did* want to signify *quid pro quo*. We need not speculate on the reason for doing so; we merely hold that Congress spoke clearly when it imported § 201(b)’s language and the accompanying *quid pro quo* requirement into § 666.

C.

At the very least, then, prosecutors pursuing a bribery theory under § 666 should be held to the same standard that § 201(b) requires, i.e., proving a *quid pro quo*. The question remains whether the language of § 666 also supports a gratuity theory. Because gratuities do *not* require *quid pro quo*, and respondent pursued a gratuity theory at trial, petitioner’s conviction might still stand if § 666 criminalizes both bribery *and* gratuity.

In fact, § 201(b) and § 666 are not identical. § 666 adds two words to its intent requirement that § 201(b) lacks: where § 201(b) merely prohibits accepting money in return for “being influenced,” (18 U.S.C. § 201(b)(2)(A)), § 666 forbids accepting payment while intending to “be influenced *or rewarded*.” 18 U.S.C. § 666(a)(1)(B) (emphasis added). Under respondent’s reading of the statute, the word “reward” signifies gratuity; in other

HORAN *v.* UNITED STATES

9

words, § 666 covers all of the same criminal conduct that § 201 does, but where § 201 uses an entire section to discuss the offense, § 666 uses only two words.

Can the single term “reward” truly signify a gratuity? Respondent cites to our opinion in *Sun-Diamond*, where we opined that “illegal gratuity, on the other hand, may constitute merely a *reward* for some future act.” 526 U.S. at 405 (emphasis added). Respondent also provides dictionary definitions for the disputed term that it argues do not contemplate *quid pro quo* or an intent to influence, such as “*Reward*: A recompense or premium offered or bestowed by government or an individual in return for special or extraordinary services to be performed...” Black’s Law Dictionary (5th ed. 1979). We concede that these contexts represent some instances which “reward” does not imply *quid pro quo*.

But while reward may not *always* imply an intent to influence, we disagree that it *never* does. Consider the fact that throughout American history, the government has offered “rewards” for information leading to the capture of fugitives. After the 1865 assassination of President Lincoln, for example, the War Department published advertisements promising a “\$100,000 Reward!” to anyone who apprehended John Wilkes Booth and his conspirators. James L. Swanson, *Manhunt: The 12-Day Chase for Lincoln’s Killer* (2006). In doing so, the Department surely intended to *influence* American citizens into joining the hunt for fugitives, rather than give whoever captured Booth a thank-you present. So too with bribery: a company might offer to “reward” a public official for every contract the official steers to the company, and in doing so engage in *quid pro quo* bribery.

Accordingly, the First Circuit has persuasively explained § 666’s “influence or reward” language may merely be describing two flavors of bribery, rather than

both bribery and gratuity. “Influence” would refer to a situation in which an official received payment, then engaged in action on the payor’s behalf; “reward” would suggest a situation where the official was promised payment, but received it only *after* acting. *United States v. Fernandez*, 722 F.3d 1, 23 (1st Cir. 2013).

Because this theory of “reward” as a term meaning “delayed *quid pro quo*” presents an equally compelling interpretation of the term as respondent’s, we conclude that “reward” is an ambiguous term. A bounty hunter might seek his quarry in the hope of receiving a reward. Conversely, a grandparent might surprise their grandchild with a gift as a reward for graduating college. In the former case, “reward” suggests a delayed *quid pro quo*, and bribery; in the latter, it suggests something closer to a (legal) gratuity. As this issue poses a puzzle that textual interpretation alone cannot solve, we move to the last stage of our analysis: applying canons of statutory construction to dispel this ambiguity.

D.

We need only two such canons to aid us in our decision today. These are the canon of constitutional avoidance, and the rule of lenity. We begin with constitutional avoidance, “a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts.” *Clark v. Martinez*, 543 U.S. 371, 381 (2005).

Unfortunately for respondent, reading “reward” to encompass gratuity *does* raise serious constitutional questions. Though we have commented briefly on § 666’s constitutionality in the past, we have never *considered* whether it would be constitutional for the federal government to regulate gratuities at the local level.

HORAN *v.* UNITED STATES

11

Congress's authority to enact § 666 stems from two provisions of the Constitution: "Spending Clause authority to appropriate federal moneys to promote the general welfare...and corresponding Necessary and Proper Clause authority...to assure that taxpayer dollars appropriated under that power are in fact spent for the general welfare..." *Sabri v. United States*, 541 U.S. 600, 605 (2004). In short, it is necessary and proper for Congress to control how its money is spent, including by punishing local officials for misusing federal funds.

Yet how does criminalizing *gratuity* under § 666 protect federal funds? The recipient of a gratuity does not act differently because of the payment; if they did, they would be influenced by the payment and therefore, by definition, be engaged in bribery. Unlike with bribery, it is unclear how gratuities pose any risk to the disbursement of federal funds. Such conduct may be criminal, but it may not be necessary and proper for Congress to police this corruption in place of state and local governments. *See McNally v. United States*, 483 U.S. 350, 360 (1987). In assuming Congress would not enact a constitutionally dubious statute, we must therefore construe "reward" in a way that is obviously constitutional, i.e., in a way that implies a delayed *quid pro quo*.

For similar reasons, respondent's preferred interpretation also fails under the rule of lenity, which "requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them." *United States v. Santos*, 553 U.S. 507, 514 (2008). In arguing that "reward" encompasses both bribe and gratuity, respondent asks us to countermand this storied rule by giving the benefit of an ambiguous criminal statute to the prosecution, rather the defendant. Because doing so would violate "the fundamental principle that no citizen should be held accountable for a violation of a statute

whose commands are uncertain,” we again reach the conclusion that respondent’s chosen reading of the statute is untenable, and so rule for petitioner in holding that the term “reward” merely connotes a different variety of *quid pro quo* bribery than the term “influence.” *Id.*

In adopting this construction of § 666, we eliminate any possibility that the statute can sustain a gratuity theory of criminal liability; “reward” must be construed to criminalize bribery alone. And, given our finding that § 666 is based directly on the preexisting § 201(b) statute, Congress clearly intended that any bribery conviction under § 666 meet the same standards as a § 201(b) conviction. Because § 201(b) mandates that the prosecution prove the existence of a *quid pro quo*, § 666 must contain the same requirement.

E.

Despite respondent’s vigorous objections, we are confident this narrowing of § 666’s scope will not unduly hamper federal prosecution of state officials. Our reasoning is twofold.

First, § 666 is only one strand in a larger network of state and federal anti-corruption laws that protect the integrity of local governments. Consider the case of Horan himself; even if acquitted of the § 666 violation on remand, his conviction for the § 1346 violation will stand. In 1980, one future federal judge wrote that the mail fraud statute is the federal prosecutor’s “Stradivarius, our Colt .45, our Louisville Slugger.” Jed S. Rakoff, *The Federal Mail Fraud Statute (Part I)*, 18 Duq. L.Rev. 771, 771 (1980). Forty-odd years later, this adage is truer than ever, as the federal mail and wire fraud statutes (18 U.S.C. §§ 1341 & 1343) provide easy means for prosecutors to combat corruption in an increasingly digital world. Some corrupt local officials

HORAN *v.* UNITED STATES

13

may adapt their criminal behavior after today's decision to escape federal prosecution under § 666. But even if they do, it will be difficult for them to consistently engage in corruption without ever using the mails or the wires – and once they do, prosecutors will quickly be able to turn to their proverbial “Louisville Slugger.”

Second, our decision only imposes some *quid pro quo* requirement on § 666; we do not decide whether that *quid pro quo* need be explicitly discussed by criminals before liability attaches, or merely implied by their words and conduct. In fact, our past decisions hint that (outside of the campaign finance context), implied *quid pro* is an acceptable basis for bribery convictions. See *Evans v. United States*, 504 U.S. 255, 274 (1992) (Kennedy, J., concurring). In the instant case, for example, a reasonable jury might not need to see an explicit email discussion between Horan and Simonton before finding a *quid pro quo* existed. Instead, the jury might deduce such an agreement from the fact that Horan did very little catering business with any party besides Simonton, or that Simonton repeatedly and substantially overpaid for various items.

In any case, because we were not briefed on this issue, we leave it for another day. In the interim, we remark only that following this decision, prosecutors still may not need to show a “smoking gun” conversation between briber and bribee to convict under § 666; a theory of implied *quid pro quo* alone may suffice.

III.

18 U.S.C. § 666 requires a *quid pro quo*. The district court allowed a jury to convict petitioner without this requirement. For that reason, we VACATE the judgment of the Court of Appeals for the Sixth Circuit and REMAND for proceedings consistent with this opinion.

Applicant Details

First Name	Joseph
Last Name	Sobecki
Citizenship Status	U. S. Citizen
Email Address	joseph@josephsobecki.com
Address	<div>Address</div> <div>Street</div> <div>405 Madison Avenue, Suite 910</div> <div>City</div> <div>Toledo</div> <div>State/Territory</div> <div>Ohio</div> <div>Zip</div> <div>43604</div> <div>Country</div> <div>United States</div>
Contact Phone Number	(419) 944-7348

Applicant Education

BA/BS From	Northwestern University
Date of BA/BS	January 2014
JD/LLB From	The Florida State University College of Law
	http://www.law.fsu.edu
Date of JD/LLB	May 15, 2021
Class Rank	Below 50%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	No

Bar Admission

Admission(s)	Florida, Ohio
--------------	---------------

Prior Judicial Experience

Judicial Internships/Externships	No
----------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

LaVia, Jennifer
jlavia@lavalaw.com
(850) 570-8069

Schwartz, Todd
tschwartz@kklaw.com
(646) 263-5315

Noonan, Dave
davenoonan@juno.com
419-509-5299

Otte, Jill
jotte@atg.state.il.us
(312) 814-3634

This applicant has certified that all data entered in this profile and any application documents are true and correct.

JOSEPH SOBECKI

405 Madison Avenue, Suite 910 • Toledo, Ohio 43604 • (419) 944-7348 • joseph@josephsobecki.com

May 28, 2023

The Honorable Judge Juan R. Sánchez
14613 U.S. Courthouse
601 Market Street, Courtroom 14-B
Philadelphia, PA 19106

The Honorable Judge Sánchez:

I am a later in life second-year attorney, graduated from Florida State College of Law, and received my undergraduate degree from Northwestern University. During my first year of practice, I worked at a law firm in Florida. In my second year of practice, I enjoy the unique privilege of practicing law with my father. I love being an attorney—and being exposed to a plethora of intellectually challenging and exciting legal issues.

My practice includes a diverse mix of civil, criminal, and appellate litigation. Many of my clients are indigent criminal defendants charged with felonies in rural counties throughout Ohio—where there is a shortage of attorneys. Through passionate, diligent, and caring representation, I have played a small role in improving our criminal justice system by increasing access to counsel for those most in need. This broad exposure has provided a range of challenges that I have risen to meet and learning opportunities that have helped me to grow. In all cases, motion practice and growing as a writer are paramount to me. Recently, an article I drafted, *Have We Met Before?—When the Right to Counsel Meets Jury Sentencing*, was published in the University of Cincinnati Law Review Blog. I am actively drafting other articles that I welcome the opportunity to discuss.

When critically analyzing complex legal issues, I think outside the box and constantly seek professional growth. The opportunity to be exposed to a diverse docket of federal litigation while growing as a writer draws me to a clerkship. My civil/criminal litigation experience and familiarity with CM/ECF have prepared me to contribute to your team.

Thank you for your time and consideration. I look forward to hearing back from you.

Sincerely,



JOSEPH SOBECKI

405 Madison Avenue, Suite 910 • Toledo, Ohio 43604 • (419) 944-7348 • joseph@josephsobecki.com

EDUCATION

Florida State University College of Law, Tallahassee, Florida

May 2021

Juris Doctor; GPA: 3.17

- Honors: Book Award for International Trade Transactions (awarded to the student with the highest grade)
- Author: *Build That Virtual Wall: Will DOD's Proposed Certification Process Actually Keep Our CUI Safe?*, FARS, DFARS, and CMMC ("Cybersecurity Maturity Model Certification"), Directed Individual Study Paper (2020)
- Activities: Member, Student Advisory Board – Student liaison to law school administration; TA, Workplace Safety

Northwestern University, Evanston, Illinois

2007-2014

Bachelor of Arts Degree in Political Science

LEGAL EXPERIENCE

Thomas A. Sobecki, Attorney at Law, Toledo, Ohio

October 2022-Present

Attorney

- Diverse practice advocating for clients charged with criminal felonies, wrongfully imprisoned by the State, juveniles, on appeal, and commercial civil clients by drafting dispositive motions and representing clients' at hearings
- Courtroom experience including preliminary hearings, arraignments, suppression motions, administrative license suspension appeals, neglected juvenile custody disputes, contempt hearings, and informal negotiations in chambers
- Acquire clients, draft fee agreements, and practice law in federal and state courts

Kelley Kronenberg, Fort Lauderdale, Florida

October 2021-October 2022

Associate Attorney

- Perform legal research, draft motions, orders, subpoenas, and discovery to advance client goals and manage and counsel corporate clients from engagement to settlement or dismissal in federal and state courts
- Successful dismissal with prejudice of cases through written dispositive motions and contested oral argument
- Utilized removal, aggressive discovery, and motion practice to achieve settlement offers below \$1,300 in federal court

Florida State University College of Law Veterans Legal Clinic, Tallahassee, Florida

August 2019-May 2021

Law Student Volunteer

- Research and draft legal memoranda on child support, driver license suspensions, and DUIs in numerous jurisdictions
- Meet and confer with military veterans regarding case status and develop legal strategy

National Defense Industrial Association ("NDIA"), Arlington, Virginia

June 2020-September 2020

Junior Fellow

- Author, *Immunizing Industry Against COVID-19 Liability*, NATIONAL DEFENSE (October 2020)
- Drafted weekly blog posts on legal issues within defense industry for publication on the NDIA website

Florida Second Judicial Circuit Guardian ad Litem Program, Tallahassee, Florida

September 2019-August 2020

Volunteer

- Certified by State of Florida to serve as an advocate for the best interest of abused and neglected children
- Make home visitations, build relationships with caregivers and children, and report findings to the court

Illinois Attorney General, Chicago, Illinois

May 2019-August 2019

Law Clerk

- Reviewed documents, drafted medical record chronologies, and proposed findings on behalf of State for workers' compensation cases
- Conducted factual investigation for workers' compensation cases to assist in developing legal strategy

PUBLICATIONS

- Author, *Have We Met Before – When the Right to Counsel Meets Jury Sentencing*, University of Cincinnati Law Review Blog (January 2023)

ENTREPRENEURIAL EXPERIENCE

Ecommerce Webstore, Toledo, Ohio

2008-2014

Owner

- Built ecommerce website with multiple sales channels, generating annual revenue over \$60,000/year from 2011-2014
- Learned command line knowledge working with Debian Linux, Apache, Nginx, MySQL/MariaDB, BIND, OpenSSH, Dovecot, Postfix, and other software necessary to build, run, and maintain secure ecommerce infrastructure

BAR, COURT, AND PROFESSIONAL ADMISSIONS

- Florida; Ohio; Passed February 2023 California Bar Examination, to be sworn in on June 6, 2023; U.S. Dist. Court for the S. Dist. of Florida; U.S. Dist. Court for the N. Dist. of Ohio; U.S. Court of Appeals for the Eleventh Circuit

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name:

Student ID:

Birthdate:

Residency:

Print Date:

Joseph Sobecki

200564826

03/24/XXXX

Non-Florida Resident (USA)

7/7/2021

Unofficial Transcript

ALL CREDIT HOURS ON THIS RECORD REFLECTED IN SEMESTER HOURS
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Transfer Credits

Transfer Credit from Ave Maria School of Law
Applied Toward Law Program

2020 Spring

Program: Law
Plan: Law Major

2018

Trm	Course	Description	Grd	GB	RP	Input	Eval	Course	Description	Grd	GB	RP	Taken	Passed	Points
FALL	1001	RESEARCH, WRITING, & ADVOCACY TORTS I	C+			3.000	0.000	LAW5501	CONSTITUTIONAL LAW I	S	SOU		3.000	3.000	0.000
FALL	1100	CONTRACTS I	B-			3.000	0.000	LAW5522	LEGISLATION AND REGULATION	S	SOU		3.000	3.000	0.000
FALL	1200	CIVIL PROCEDURE I	A			2.000	0.000	LAW5793	LEGAL WRITNG/RECH II	S	SOU		3.000	3.000	0.000
FALL	1300	PROPERTY I	B-			3.000	0.000	LAW7113	CRIMINAL PROCEDURE-ADJUDICATI	S	SOU		3.000	3.000	0.000
FALL	1400	MORAL FOUNDATIONS OF THE LAW I	A-			3.000	0.000	LAW7910	DIR INDIV STUDY	S	SOU		1.000	1.000	0.000
FALL	1500	Term Totals				2.000	0.000	LAW7930	SPECIAL TOPICS	S	SOU		3.000	3.000	0.000
						16.000	0.000		Topic: EMPLOYMENT LAW						

2019

Trm	Course	Description	Grd	GB	RP	Input	Eval	Course	Description	Grd	GB	RP	Taken	Passed	Points
SPR	1002	RESEARCH, WRITING, ADVOCACY II	C-			2.000	0.000		Extraordinary circumstances encountered (COVID-19)						
SPR	1101	TORTS II	B-			3.000	0.000								
SPR	1201	CONTRACTS II	C+			3.000	0.000								
SPR	1301	CIVIL PROCEDURE II	B-			3.000	0.000								
SPR	1401	PROPERTY II	B-			2.000	0.000								
SPR	1600	CRIMINAL LAW	B-			3.000	0.000								
		Term Totals				16.000	0.000								

Beginning of Law Record

Term GPA	3.217	Term Totals	16.000	16.000	0.000	0.000
Transfer Term GPA	0.000	Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	0.000	Comb Totals	16.000	16.000	0.000	0.000
Cum GPA	3.217	Cum Totals	31.000	31.000	15.000	48.250
Transfer Cum GPA	0.000	Transfer Totals	30.000	30.000	0.000	0.000
Combined Cum GPA	3.217	Comb Totals	61.000	61.000	15.000	48.250

2019 Fall

Program: Law
Plan: Law Major

2020 Fall

Program: Law
Plan: Law Major

Course	Description	Grd	GB	RP	Taken	Passed	Points	Course	Description	Grd	GB	RP	Taken	Passed	Points
LAW6330	EVIDENCE	B+	LWG		4.000	4.000	13.000	LAW5502	CONSTITUTIONL LAW II	B-	LWG		3.000	3.000	8.250
LAW7111	CRIMINAL PROCEDURE - POLICE	A-	LWG		3.000	3.000	11.250	LAW6520	ADMINISTRATIVE LAW	B	LWG		4.000	4.000	12.000
LAW7750	PROFSNL RESPONSIBLTY	B	LWG		3.000	3.000	9.000	LAW7930	SPECIAL TOPICS	A-	LWG		3.000	3.000	11.250
LAW7930	SPECIAL TOPICS	B	LWG		3.000	3.000	9.000	LAW7930	Topic: INTL TRADE TRANSACTION						
LAW7930	Topic: WHITE COLLAR CRIME							LAW7930	SPECIAL TOPICS	B+	LWG		3.000	3.000	9.750
LAW7930	SPECIAL TOPICS	B	LWG		2.000	2.000	6.000		Topic: POSTCONVIC REMEDIES						
LAW7930	Topic: WORKER'S COMPENSATION SKILLS														

Term GPA	3.217	Term Totals	15.000	15.000	15.000	48.250
Transfer Term GPA	0.000	Transfer Totals	30.000	30.000	0.000	0.000
Combined Term GPA	3.217	Comb Totals	45.000	45.000	15.000	48.250
Cum GPA	3.217	Cum Totals	15.000	15.000	15.000	48.250
Transfer Cum GPA	0.000	Transfer Totals	30.000	30.000	0.000	0.000
Combined Cum GPA	3.217	Comb Totals	45.000	45.000	15.000	48.250

Florida State University

Office of the Registrar
282 Champions Way
PO Box 3062480
Tallahassee, Florida 32306-2480

Name:

Student ID:
Birthdate:
Residency:
Print Date:

Joseph Sobecki

200564826
03/24/XXXX
Non-Florida Resident (USA)
7/7/2021

Unofficial Transcript

ALL CREDIT HOURS ON THIS RECORD REFLECTED IN SEMESTER HOURS
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2021 Spring

Program: Law
Plan: Law Major

Course	Description	Grd	GB	RP	Taken	Passed	Points
LAW6060	CORPORATIONS	S	SOU		3.000	3.000	0.000
LAW7840	SPORTS LAW	A-	LWG		2.000	2.000	7.500
LAW7930	SPECIAL TOPICS	B	LWG		2.000	2.000	6.000
	Topic: EMPLOYMENT DISCRIMINATION LAW						
LAW7930	SPECIAL TOPICS	B-	LWG		2.000	2.000	5.500
	Topic: FLORIDA LEGISLATIVE PRACTICE						
LAW7930	SPECIAL TOPICS	B+	LWG		2.000	2.000	6.500
	Topic: CONTRACT DRAFTING						
LAW7930	SPECIAL TOPICS	B-	LWG		2.000	2.000	5.500
	Topic: SURVEILLANCE & INTELLIGENCE LA						
LAW7930	SPECIAL TOPICS	S	SOU		1.000	1.000	0.000
	Topic: TOPICS II: MBE						

			Taken	Passed	GPA Hrs	Points
Term GPA	3.100	Term Totals	14.000	14.000	10.000	31.000
Transfer Term GPA		Transfer Totals	0.000	0.000	0.000	0.000
Combined Term GPA	3.100	Comb Totals	14.000	14.000	10.000	31.000
Cum GPA	3.171	Cum Totals	58.000	58.000	38.000	120.500
Transfer Cum GPA		Transfer Totals	30.000	30.000	0.000	0.000
Combined Cum GPA	3.171	Comb Totals	88.000	88.000	38.000	120.500

Degrees Awarded

Degree: Juris Doctor
Program: Law
Confer Date: 04/24/2021
Plan: Law

Law Career Totals

			Taken	Passed	GPA Hrs	Points
Cum GPA:	3.171	Cum Totals	58.000	58.000	38.000	120.500
Trans Cum GPA		Trans Totals	30.000	30.000	0.000	0.000
Comb Cum GPA	3.171	Comb Totals	88.000	88.000	38.000	120.500

End of Law

End of Academic Transcript

May 25, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

This letter is to enthusiastically recommend Joseph Sobecki for a judicial clerkship. I have known Mr. Sobecki since he was a volunteer advocate in the Florida State University College of Law Veterans Legal Clinic, of which I was the Director.

Mr. Sobecki was the best volunteer I had during my years at the clinic. I gave him a variety of projects, including tracking down a missing spouse, researching whether an air conditioner is a fixture, and working on administrative cases involving other states. He was so diligent and his work was so thorough that I always had complete confidence that he had done everything that could be done to help the client. His written answers to me were complete, concise, and clear, something I especially value, given my 16 years of experience as a Legal Writing Professor. He worked as hard as any of the students who were enrolled in the class, and harder than many of them.

Mr. Sobecki is mature, professional, and absolutely delightful to work with. I cannot begin to say enough good things about him. He would be a top-notch judicial clerk. Therefore, I am pleased to recommend him without reservation. If you need any additional information, please call me on my cell phone (850.900.7545). I would be happy to talk to you about his application.

Sincerely,

Jennifer LaVia

Attorney
LaVia Law, P.A.

Jennifer LaVia - jlavia@lavalaw.com - (850) 570-8069

May 25, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my sincerest pleasure to provide this letter of recommendation for Joseph Sobecki as a Judicial Clerk. As a partner at the law firm of Kelley Kronenberg in Fort Lauderdale, Florida I have known Joseph for one year in his role as attorney under my supervision since being sworn in to the bar. As someone who has worked closely with Joseph, his dedication to the work and love of the law is unmatched, and has enabled him to develop and grow as a young lawyer significantly more quickly than his peers.

Since day one, Joseph has been a pleasure to work alongside. He is extremely passionate about any assignment sent his way, always going above and beyond to research, analyze and provide unparalleled insight into the issues. His writing is concise, well thought out and on-point, while in the courtroom, he argues zealously and professionally. Joseph has respect for his colleagues, is extremely personable and is already a mentor to younger attorneys. He has developed relationships and a tremendous rapport with opposing counsels. He epitomizes the eagerness, and desire to grow an employer looks for in a young attorney. He is truly an asset to the firm.

Accordingly, I highly recommend Joseph for this position as I truly believe in his ability to provide a positive contribution in his role of judicial clerk.

Respectfully,
Todd A. Schwartz

Todd Schwartz - tschwartz@kklaw.com - (646) 263-5315

I have known Joseph Sobecki for approximately 21 years. Joseph is the oldest son of my present employer, Thomas A. Sobecki, who is a highly regarded attorney in Toledo, Ohio. I first met Joseph when he was about 14 years old at a Christmas dinner given by his father. Even at that age, my wife and I were impressed by his thoughtfulness, intelligence, and maturity, as he was already demonstrating a natural ability to be at the same time completely respectful and completely at ease with older adults.

By the time Joseph was perhaps about 17 or 18 years old, he had started to become involved with the business and technical aspects of his father's practice, and he is now a very important support to that practice. Joseph has created and maintained our web presence and email system, has been very involved with our marketing, with our communications systems, and with many of the ways in which we deal with clients and with the public, and in many other ways has been a major contributor to the success of his father's practice. As Thomas Sobecki's long time legal assistant, I have had frequent occasion to work with Joseph on a number of matters, and have found him to be reliable, timely, and determined. Joseph can and should take a substantial amount of credit for the success of his father's law practice.

Joseph in all the dealings in which I have observed him, and indeed from the first days of our acquaintance, has demonstrated great integrity and holds himself to the highest standards of performance, and I would not hesitate to trust him with the most important affairs of my family. He holds the legal profession in high regard, and I believe that he will bring nothing but honor upon any court or judge whom he might serve.

Joseph also has a keen and analytical mind when it comes to legal matters. I have a law degree from Georgetown University, and for the past 25 years have been earning my living doing legal research and writing, everything from suppression motions in municipal courts to Supreme Court briefing, and in my many discussions with Joseph the past couple years in various areas of law with which I have substantial familiarity and even expertise, I have been impressed not only with his knowledge of law (which, of course, as a young lawyer, is still being developed), but even more so with the speed with which he comes to understand, absorb, and remember complex areas of law.

Please do not hesitate to call me at 419-509-5299 if you have any questions or concerns, to write me at the address above, or to email me at davenport@juno.com.

August 4, 2022

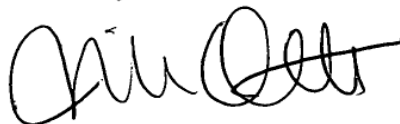
To whom it may concern:

The purpose of this letter is to share my enthusiasm for my former law clerk Joseph Sobecki. Joseph clerked for the Attorney General's Office in the Workers' Compensation Bureau during the summer of 2019 and his assistance was extremely valuable. Joseph is very bright and able to grasp quite easily some of the more challenging workers' compensation concepts. He is also a superb researcher. Not only was he fast at conducting the actual research, he was also able to discuss effectively with the attorneys the results of his research. This is a valuable skill that I have found is difficult for some students, but not for Joseph. During the summer, he also reviewed many files in order to respond with reasonable offers to opposing counsels' settlement demands. Finally, Joseph assisted the lead attorneys in several trials and depositions.

I want to add some additional thoughts about Joseph's personality and interpersonal skills. I interview candidates regularly in my position and in addition to the skills listed above, I am also looking for applicants who I think will be a good fit with the staff I already have in place. Joseph fit in well with the other 15 attorneys, three support staff and the other law clerk. Not only was he competent law clerk, he was also pleasant, displayed a positive attitude and smiled all the time. He was truly a delight to work with.

I am confident that when you review Joseph's application you will determine that he is a worthy candidate due to his organizational skills, professionalism, and intelligence. If you would like to further discuss Joseph, please call me at the number listed below.

Sincerely,



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Writing Sample Introduction – Response Opposing Plaintiffs’ Motion to Remand

I drafted this sample in June 2022, and selected it because it concisely demonstrates my writing style and how I distinguish cases cited by the plaintiffs (p. 8-10). Most importantly, this writing sample shows how I learn and grow from every task I complete. My argument for removal was based on plaintiffs’ damage estimate and alleged attorney fees before removal exceeding \$75,000. Precedent existed to include attorney fees for the entire case as part of the amount in controversy. I touched on this issue, but argued that the court did not need to reach it since the plaintiffs’ own damage estimate and alleged attorney fees before removal exceeded \$75,000. The case was remanded because the court found that federal jurisdiction does not depend on “plaintiff’s posturing,” without the court addressing attorney fees for the entire case—pursuant to my own argument that the court need not reach the issue of attorney fees for the entire case as part of the amount in controversy. Consequently, I learned to never forego an alternative argument. This writing sample is my own work and has not been edited by any third parties. Non-material modifications were made in the document provided to this Court.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER: 22-CV-60847 – CIVIL – SCOLA/GOODMAN

JEAN DOMINIQUE & GEPHTA
MAGNANT,

Plaintiff,

v.

GEOVERA SPECIALTY INSURANCE
COMPANY

Defendant.

DEFENDANT’S RESPONSE OPPOSING PLAINTIFF’S MOTION TO REMAND

Defendant, GeoVera Specialty Insurance Company (“GeoVera”), respectfully files its Response Opposing Plaintiffs’ Motion to Remand, and states the following:

INTRODUCTION

Plaintiffs assert a slew of legal and factual errors in their Motion to Remand in a veiled attempt to evade federal jurisdiction. GeoVera will correct the legal inaccuracies, set forth the burden that GeoVera must meet to prove the amount in controversy in the 11th Circuit, and show that GeoVera has met its burden to prove that the amount in controversy exceeds \$75,000.00.

BACKGROUND

The Insureds’ commenced a civil action in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, styled *Jean Dominique & Gephta Magnant v. GeoVera Specialty Insurance Company*, Case Number “CACE-22-005177” on April 8, 2022. *See* Def. Notice of Removal, Doc. No. 1, Ex. Compl. Attach. No. 2. The subject Complaint alleges a breach of contract premised upon insurance policy number “GH70024474” covering the Insureds’ property located at “8630 NW 54th St., Lauderhill, Florida, 33351.” Def. Notice of Removal, Doc.

No. 1, Ex. Compl. ¶ 7, 11, Attach. No. 2. Specifically, the Complaint alleges water damage to the subject property as a result from Hurricane Irma on September 10, 2017, and that GeoVera refused to pay the full amount of insurance proceeds due. *Id.* ¶ 8, 11. Insureds further allege that all conditions precedent to recover under the subject policy and applicable Florida Statutes have been performed. *Id.* ¶ 9. On May 3, 2022, GeoVera removed the case to the United States District Court for the Southern District of Florida. Def. Notice of Removal, Doc. No. 1. On June 2, 2022, the Plaintiffs filed a Motion to Remand to the Circuit Court of the Seventeenth Judicial Circuit Court in and for Broward County, Florida, alleging that GeoVera is merely speculating that damages exceed \$75,000.00. *See* Pls. Motion to Remand at 2, Doc. No. 2.

ARGUMENT

I. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00 BY A PREPONDERANCE OF THE EVIDENCE.

Plaintiffs assert that the “\$75,000.00 jurisdictional amount must be proven before federal jurisdiction can be invoked.” Pls. Mot. to Remand at 5, Doc. No. 8. This statement is legal error – for a case to be removed based on diversity jurisdiction, the amount in controversy must *exceed* \$75,000.00, not simply equal \$75,000.00. 28 U.S.C.A. § 1332(a) (West). Plaintiffs later assert that damages in this case are less than \$75,001.00. Pls. Mot. to Remand at 7, Doc. No. 8. Since the amount in controversy need only equal \$75,000.01, this is another misstatement of law by the Plaintiffs. The same Plaintiffs who make numerous legal errors related to the jurisdictional amount, completely fail to assert the proper burden that a removing party must meet to establish the amount in controversy. *See* Pls. Mot. to Remand at 4-5, Doc. No. 8.

As the removing party, the burden falls upon GeoVera to show that this case was properly removed. *See Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061 (11th Cir. 2010). In the 11th Circuit, when a plaintiff makes an unspecified claim for damages in a state complaint, the

removing party must show by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional requirement. *Id.* Here, the Plaintiffs have asserted an unspecified claim for damages in their state complaint. *See* Def. Notice of Removal, Doc. No. 1, Ex. Pls. Compl. ¶ 1, Attach. No. 2. Specifically, Plaintiffs assert damages “in excess of \$30,000.00, exclusive of costs, interest and attorneys’ fees.” *Id.* In asserting damages “in excess of \$30,000.00,” the Plaintiffs have clearly made an unspecified claim for damages. Therefore, GeoVera must show by preponderance of the evidence that the amount in controversy exceeds \$75,000.00. Preponderance of the evidence means that GeoVera must prove that there is greater than a 50% chance that GeoVera’s claim is true.

A. GeoVera received an estimate in the amount of \$70,123.85.

Since Plaintiffs made an unspecified claim for damages, GeoVera went directly to the Plaintiffs in order to determine the amount in controversy. The Plaintiffs provided an estimate in the amount of \$70,123.85, and alleged attorney’s fees in the amount of \$7,000.00 on April 26, 2022. *See* Def. Notice of Removal, Doc. No. 1, Ex. Estimate at 16-17, Attach. No. 4. The amount of alleged attorney’s fees was conveyed via email, along with Plaintiffs estimate. Armed with this information, GeoVera researched how attorney’s fees impact the amount in controversy for diversity purposes in the 11th Circuit.

1. Attorneys’ fees are included in the amount in controversy.

The 11th Circuit has held that attorney fees should not be included in an amount in controversy for diversity purposes, unless attorneys’ fees are allowed by statute – which they are in the subject case. *See Rae v. Perry*, 392 F. App’x 753 (11th Cir. 2010); *see* FLA. STAT. § 627.428. Begrudgingly, if the Plaintiffs were to be awarded a judgment against GeoVera in this action, the Plaintiffs would be entitled to have their attorneys’ fees paid by GeoVera. *Id.* The 11th

Circuit is clear that the subject state statute will apply to a judgment in federal court. *See Fritz v. Standard Sec. Life Ins. Co. of New York*, 676 F.2d 1356 (11th Cir. 1982); *See generally* FLA. STAT. § 627.428. Therefore, since attorneys' fees are allowable by statute in the subject case, and will apply to a judgment in federal court, they are included in the amount in controversy.

Furthermore, this Court has held that a "reasonable amount" of attorneys' fees would include more than just those fees induced before removal. *See Lutz v. Protective Life Ins. Co.*, 328 F. Supp. 2d 1350, 1356 (S.D. Fla. 2004). Consequently, Plaintiffs' attorneys' fees to be included in the amount in controversy includes more than just Plaintiffs attorneys' fees incurred prior to removal. However, this Court does not need to reach the issue of the exact amount of Plaintiffs' attorney fees relevant in the amount in controversy, nor does GeoVera ask this Court to address this issue – because it is not necessary. Plaintiffs alleged that they incurred attorney's fees in the amount of \$7,000.00 before removal, and GeoVera asks this Court to take judicial notice of this fact without further evidence because, regrettably, it is objectively reasonable considering other similar cases that this Court is no doubt familiar.

B. GeoVera's basis for removal came directly from the Plaintiffs.

Defendants removed this action based on an estimate in the amount of \$70,123.85 provided by the Plaintiffs, and alleged attorney fees in the amount of \$7,000.00 at the time of removal. GeoVera has made no assertion or "wild guesses" as to the amount on controversy. Further, GeoVera does not ask this Court to "guess," nor does GeoVera proposit to interpedently assert any part of the amount in controversy. Rather, GeoVera removed this case based on information on damage provided by the Plaintiff, which according to basic mathematics, exceeds \$75,000.00 once alleged attorney fees of \$7,000.00 were added to the Plaintiffs' estimate. This evidence satisfies GeoVera burden to show that the amount in controversy exceeds \$75,000.00, by preponderance of

the evidence. There is no question that the estimate was provided by the Plaintiffs, and according to the Plaintiffs own estimate and allegation of incurred attorney's fees, it is clear that the preponderance of the evidence shows that the amount in controversy exceeded \$75,000.00 at the time of removal.

GeoVera cannot control if Plaintiffs choose to allege damages without a reduction for prior payment. When Plaintiffs failed to give credit for prior payment, Plaintiffs placed this additional amount in controversy. This is an unfortunate tactic, but one which the Plaintiffs in this case asserted – until after the case was removed based on diversity, at which point they altered their demand to seemingly evade federal jurisdiction. Plaintiffs did not discover GeoVera's prior payment in the immediate aftermath of removal by chance, they merely admitted to it, and then played with numbers to inflate the prior payment to the amount of what appears to be RCV coverage, not actual prior payment, to seemingly avoid federal jurisdiction. Plaintiffs changing tune does not change the fact that on the date of removal, GeoVera has shown by preponderance of the evidence that the amount in controversy exceeded \$75,000.00.

C. GeoVera only needs to establish that the amount in controversy exceeded \$75,000.00 at the time of removal.

To avoid speculation and “wild guesses,” GeoVera could only act on information related to the amount in controversy at the time of removal. Similarly, the First Circuit looks at circumstances “at the time the complaint is filed” when analyzing the amount in controversy. *See Stewart v. Tupperware Corp.*, 356 F.3d 335, 338 (1st Cir. 2004). GeoVera asks this Court to limit the analysis of the amount in controversy to the circumstances at the time of removal. Plaintiffs' actions and assertions regarding the amount in controversy after removal are irrelevant because events occurring after removal which may reduce the damages recoverable below the amount in controversy requirement do not oust the district court's jurisdiction. *See St. Paul Mercury Indem.*

Co. v. Red Cab Co., 303 U.S. 283, 292, 58 S. Ct. 586, 592, 82 L. Ed. 845 (1938). Therefore, GeoVera could only base removal on information available at the time of removal, and GeoVera only needed to establish that the amount in controversy exceeded \$75,000.00 at the time of removal.

II. PLAINTIFFS ACTIONS FOLLOWING REMOVAL ARE BELIEVED TO BE A DIRECT ATTEMPT TO EVADE FEDERAL JURISDICTION.

Plaintiffs Motion for Remand includes an email which reduces their indemnity demand to \$49,048.00, based on “prior payment.” Not only was this email sent *after* removal, but in support, Plaintiffs attach an estimate from GeoVera showing a net claim of \$7,151.57, yet Plaintiffs give GeoVera “credit” for a prior payment of \$21,075.71. Following removal, Plaintiffs provided an estimate dated March 11, 2022, but which was likely created *after* removal, because Plaintiffs assert that they became of prior payment *after* filing suit. If Plaintiffs became aware of prior payment after filing suit, and Plaintiffs filed suit on April 8, 2022, why is Plaintiffs’ estimate showing “prior payment” dated March 11, 2022? Since this “new” estimate was provided following removal, GeoVera believes that the Plaintiffs modified their original estimate, and backdated it to March 11, 2022, in an attempt to evade federal jurisdiction. Furthermore, Plaintiffs’ “new” estimate is identical to Plaintiffs’ original estimate, but for a reduction for “prior payment” – a convenient fact given that Plaintiffs are attempting to dispute removal to federal jurisdiction over their claim.

How Plaintiffs arrive at a “payment” by GeoVera in the amount of \$21,075.71 is anything but clear. Are Plaintiffs giving credit to GeoVera for prior “payment” based on the amount of coverage opened for replacement cost value, or the amount of coverage in actual cash value plus the deductible? GeoVera doesn’t know because Plaintiffs do not elaborate. GeoVera appreciates Plaintiffs attempt to give GeoVera “credit” for what appears to be an amount in excess of the

amount of opened coverage, plus the deductible \$13,750.00, but believes that Plaintiffs are “playing with numbers” to make GeoVera’s prior “payment” appear larger than it actually is to support a remand. If this Court, the Plaintiffs, and GeoVera were all tasked with listing the amount of prior payment on this claim, all three might very well list a different a number. To even determine the amount of prior payment, speculation is involved. Prior payment could be defined as ACV coverage, actual payment, actual payment plus the deductible, or in any other number of speculative ways. What is not speculative is that *fact* that Plaintiffs did not account for any prior payment, until immediately following removal – this was no accident. Plaintiffs considered the full amount of alleged damage as part of the amount in controversy without reduction – until it no longer benefited them to do so.

Everything asserted by the Plaintiffs regarding the amount in controversy is confusing, lacking clarity, and done in a reactionary response to GeoVera’s removal to federal court.

Regardless of Plaintiffs confusing assertions to remand from federal jurisdiction, GeoVera retains the sole burden to prove the amount in controversy. If GeoVera does not meet its burden, this case must be remanded. GeoVera meets its burden by removing this action based on an estimate provided by the Plaintiffs in the amount of \$70,123.85, and an alleged amount of attorney fees in the amount of \$7,000.00 at the time of removal.

If this Court does not take judicial notice of \$7,000.00 in attorney’s fees, this Court need look no further than Plaintiffs own Motion to Remand, which Plaintiffs again allege attorney’s fees in the amount to \$7,000.00. Pls. Mot. to Remand at 43, Doc. No. 8. This mirrors communication that the Plaintiffs provided to GeoVera regarding alleged attorney’s fees prior to removal. None of this takes into account attorneys fees after removal, and this Court has found that attorney’s fees included in the amount in controversy includes more than just attorneys’ fees

incurred prior to removal. *See Lutz v. Protective Life Ins. Co.*, 328 F. Supp. 2d 1350, 1356 (S.D. Fla. 2004).

Nonetheless, the exact amount of Plaintiffs attorney's fees is not relevant. This Court need not speculate as to the exact amount of Plaintiffs attorney's fees, nor to the exact amount of GeoVera' prior payment, both of which could be molded by a sophisticated party to suit their interests. GeoVera does not speculate, and does not ask this Court to speculate as to the amount in controversy at the time of removal. GeoVera has provided the Court with a copy of the estimate upon which removal was based. *See* Def. Notice of Removal, Doc. No. 1, Ex. Estimate at 16-17, Attach. No. 4. This estimate plus alleged attorney's fees in the amount of \$7,000.00 on the date of removal, clearly shows by preponderance of the evidence that the amount in controversy exceeded \$75,000.00 at the time of removal. Since GeoVera has satisfied its burden, this case was properly removed.

A. Plaintiffs cite cases that are differentiated from the present case.

Plaintiffs cite "similar" circumstances in a *Tago v. Clarendon*, a case where plaintiffs pre-suit settlement demand of \$100,000.00 was found to contribute little to the amount in controversy because there was nothing in the record to substantiate that the pre-suit demand realistically valued the plaintiff's claim. *See Tago v. Clarendon Nat. Ins. Co.*, No. 8:05CV1634T23EAJ, 2006 WL 314513, at *1 (M.D. Fla. Feb. 9, 2006). The case was remanded after the defendant provided no additional evidence pertaining to the amount in controversy and requested "limited discovery" to ascertain additional information about the amount in controversy. *Id.* at *2. In the present case, GeoVera neither relies on Plaintiffs' indemnity demand, nor asks for "limited discovery" to determine additional information about the amount in controversy. Rather, GeoVera relies on an

estimate provided by the Plaintiffs in the amount of \$70,123.85, and Plaintiffs' attorney's fees at the time of removal.

Another case cited by the Plaintiffs is *Ralph Sander Smith v. Hanover*. Plaintiffs' Motion to Remand in this matter is eerily similar, and in some cases word for word verbatim to the Motion to Remand in *Ralph Sander Smith* – including references to non-existent attachments. However, the factual holding of the case is very different than Plaintiffs' portrayal. In *Ralph Sander Smith* the defendant made assertions of a jurisdictional amount without providing additional evidentiary support. *Ralph Sander Smith v. Hanover Ins. Co.*, Case No. 8:06-cv-829-T-26EAJ (M.D. Fla.). Here, GeoVera makes no independent assertion of the amount in controversy, and removed this action based on an estimate provided by the Plaintiffs in the amount of \$70,123.85, and Plaintiffs' attorney's fees at the time of removal.

The next case cited by the Plaintiffs is *Pearl Artist v. Allianz Ins. Co.*. In this case, Plaintiffs assert a holding that conclusory allegations are insufficient to establish the jurisdictional amount. Here, GeoVera makes no independent assertion or conclusory statements regarding the amount in controversy, and removed this action based on an estimate provided by the Plaintiffs in the amount of \$70,123.85, and Plaintiffs' attorney's fees incurred at the time of removal.

Plaintiffs again cite to another distinguishable case in *Frith v. Auto-Owners Ins. Co.*, in this case the defendant's second notice of removal was rejected, and the case was remanded for a second time after defendant's speculated that the damages plus attorney fees "more likely than not" exceeds the jurisdictional threshold. *See Frith v. Auto-Owners Ins. Co.*, No. 8:08-CV-311-T-24TGW, 2008 WL 1897586, at *1 (M.D. Fla. Apr. 28, 2008). Here, GeoVera makes no such assertion. Rather, GeoVera removed this action based on an estimate provided by the Plaintiffs in the amount of \$70,123.85, and Plaintiffs' attorney's fees incurred at the time of removal.

Furthermore, GeoVera does not ask this Court to speculate as to any amount of Plaintiffs' attorney fees after removal. Rather, GeoVera relies on Plaintiffs own admission of incurring attorney fees of \$7,000.00 at the time of removal. Unlike in *Frith*, GeoVera does not speculate as to what Plaintiffs' attorney's fees might be because at the time of removal, Plaintiffs' assertion of incurred attorney's fees added to Plaintiffs estimate, comfortably totaled more than \$75,000.00.

B. Plaintiffs misstate the contents of their own Complaint.

In Plaintiffs' Motion to Remand it is asserted that paragraph one of Plaintiffs' Complaint states that this is an action for damages under an insurance policy for a loss value of \$49,048.00. *See* Pls. Mot. to Remand at 7, Doc. No. 8. This is a wholly inaccurate. Plaintiffs' complaint states in paragraph one that "[t]his is an action for damages under an insurance policy for a loss of value in excess of \$30,000.00, exclusive of costs, interest and attorneys' fees." *See* Def. Notice of Removal, Doc. No. 1, Ex. Pls. Compl. ¶ 1, Attach. No. 2. As such, Plaintiffs' Complaint contains an unspecified amount of damages. Plaintiffs allege that since their Complaint "clearly" states an amount in controversy less than the jurisdictional amount, that GeoVera's "conclusory" statements are inadequate to confer federal jurisdiction. Plaintiffs' Complaint makes no "clear" showing of the amount in controversy, and does not allege an amount in controversy. Plaintiffs' statement in their Motion to Remand alleging that their complaint states a "loss value of \$49,048.00," is at best a negligent mistake of fact, and is at worst evidence of bad faith litigation. GeoVera asserts that this Court should give no credence to any statement of fact or law asserted by Plaintiffs in their Motion to Remand, without independently checking Plaintiffs' assertions of law and fact.

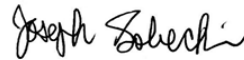
CONCLUSION

Plaintiffs filed a Complaint listing an unspecified amount of damages. GeoVera is required to show by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00 in

order for this Court to retain jurisdiction. GeoVera satisfied this burden by showing Plaintiffs' estimate for damages in the amount of \$70,123.85, and that Plaintiffs allege attorney fees of \$7,000.00 at the time of removal. This evidence proves by a preponderance of evidence that GeoVera's claim of an amount in controversy exceeding \$75,000.00 is true. As such, this case was properly removed to federal court. GeoVera respectfully requests that this Court deny Plaintiffs' Motion to Remand and retain jurisdiction over this matter.

Dated June 16, 2022

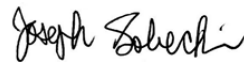
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by Electronic Filing (CM/ECF) on June 16, 2022, on all counsel or parties of record on the Service List Below.



Joseph Sobecki

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Writing Sample Introduction – Motion to Strike or Alternatively for Leave to Respond

This sample was drafted in January 2023, and was selected because it is a short example of how I think outside the box. The defendant filed a cursory motion to dismiss. After my opposition, the defendant filed a reply raising new argument. Instead of filing a motion for leave to file a surrebuttal, I filed a motion to strike the new arguments or alternatively for leave to file a surrebuttal. Strategically, this motion to strike, and a later reply provided the opportunity to indirectly attack the defendant's motion to dismiss, and new argument raised in the reply brief, without requiring permission from the court to file a surrebuttal.

This sample also demonstrates my ability to utilize case law from another jurisdiction in support of an argument. See page four, where the holding in *Slay* (Eastern District of Missouri) is utilized to support the contention that the *Deem* test (derived from Ohio case law), first raised by the defendant in its reply, should not be considered by the court. This writing sample is my own work and has not been edited by any third parties. Non-material modifications were made in the document provided to this Court, such as removing the proposed order, required by a local rule, included with the original filing.

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Arthur N. Richter)	
c/o Joseph Sobecki)	Case Number: G-4801-CI-202204333-000
405 Madison Avenue, Suite 910)	
Toledo, Ohio 43604)	
)	Judge: Michael R. Goulding
Plaintiff,)	
vs.)	
)	
State of Ohio)	
c/o Ohio Attorney General David Yost)	
Senior Assistant Attorney General Andrew Gatti)	
30 East Broad Street, 23rd Floor)	
Columbus, Ohio 43215)	
)	
Defendant.)	

MOTION TO STRIKE OR ALTERNATIVELY FOR LEAVE TO RESPOND

Plaintiff, Arthur N. Richter (“Richter”), files this Motion to Strike a Portion of Defendant’s “Reply in Support of Dismissal” or in the alternative, for leave to Respond to Defendant’s Reply and states as follows:

INTRODUCTION

Almost three years ago to this day, on January 2, 2020, Arthur Richter was released from prison for crimes that he did not commit. Richter deserved better from the State then, and he is entitled to fairness now. Defendant’s Reply raises new arguments for the first time—an action tantamount to “sandbagging.” Richter will show why this violates fundamental elements of fairness and due process, and that precedent prohibits this action. Alternatively, if this Court wishes for Plaintiff to address the substantive merits of the State’s Reply, Richter will ask for leave to respond to new arguments raised by the State for the first time, less than 48 hours ago, in its Reply.

PROCEDURAL BACKGROUND

On November 15, 2022, Richter filed a Complaint in the Lucas County Court of Common Pleas to be declared a wrongfully imprisoned individual. A Motion to Dismiss was filed by the State on December 14, 2022. Richter responded on December 27, 2022, filing a Response Opposing the State’s Motion to Dismiss. On January 3, 2023, the State filed a Reply to Richter’s Response.

ARGUMENT

I. THE STATE RAISES NEW ARGUMENTS FOR THE FIRST TIME IN ITS REPLY.

In Defendant’s Motion to Dismiss, the State argued that this case must be dismissed because Richter cannot satisfy the fifth element necessary to be declared a wrongfully imprisoned individual. *See* Def. Mot. to Dismiss at 4. After quoting the lengthy fifth element of the statute, the Defendant concluded that the Plaintiff “appears” to be advancing a theory that reversal on appeal constitutes procedural error. *Id.* at 5. Lacking any analysis of the multiple pathways to satisfy the fifth element of the statute or support for the “theory” the State concluded Richter was asserting, the State leapt into drafting a half page of why dismissal is mandatory—assuming, of course, that Richter is proceeding under the “theory” conclusively asserted by the State. *Id.* at 5.

A. The State failed to argue that Richter could not satisfy the second or third pathway of the fifth element.

There is no dispute there are three pathways to satisfy the fifth element necessary to be declared a wrongfully imprisoned individual. *See* Pl. Reply to Def. Mot. to Dismiss at 3. Defendant’s Motion to dismiss is six pages long. *See* Def. Mot. to Dismiss. The first page is the cover sheet, followed by a statement of facts on page two. *Id.* at 1-2. The first half of page three addresses the legal standard, the second half explains the process to be declared a wrongfully

imprisoned individual and continues until the end of page four, where the State quotes the lengthy R.C. 2743.48(A)(5). *Id.* at 3-4. Defendant’s substantive argument starts and ends on page five. *Id.* at 5. Here, the State asserts that it “appears” that Plaintiff is asserting a theory that reversal on appeal constitutes procedural error. *Id.* Without further analysis or explanation of why this is Plaintiffs “theory,” the State asserts that reversal on appeal does not equate to wrongful imprisonment. *Id.* The State alleges that since Richter cannot prove procedural error as required by R.C. 2743.48(A)(5), Richter cannot satisfy the statute and therefore cannot state a claim upon which relief can be granted. *Id.*

The State could have addressed the next two pathways necessary to satisfy the fifth element in its Motion and analyzed why Richter could not satisfy each. Rather, the State made a conclusory assumption and addressed one—the least relevant pathway.

Now, for the first time in its Reply to Richter’s Response, the State raises the two other pathways by arguing that disorderly conduct is a lesser included offense of inciting to violence and by making the conclusory statement that Richter has “conceded” that an offense was committed by an individual. *See* Def. Reply to Pl. Response to Defendant’s Motion to Dismiss at 3-4.

It is well-established that the moving party cannot raise new arguments in a reply brief, thus depriving the nonmoving party of the opportunity to respond to these arguments. The Ohio Supreme Court held that “of course, a party cannot raise an issue for the first time in a reply brief.” *See Wooster Floral & Gifts, L.L.C. v. Green Thumb Floral & Garden Ctr., Inc.*, 164 Ohio St.3d 57, 60, 2020-Ohio-5614, 172 N.E.3d 60. In *Wooster Floral* the Court held that a party who failed to challenge the clear and convincing evidence standard of the Deceptive Trade Practices Act in its merit brief, could not raise the issue in its reply brief. *Id.* Here, the State failed to challenge two of the three alternative pathways to satisfy the fifth element necessary to be declared a wrongfully

imprisoned individual in its Merit Brief, but challenges these pathways in its Reply Brief. Just as the Ohio Supreme Court would not consider a new argument in the reply brief of *Wooster Floral*, this Court should not consider the new arguments made in the State's Reply. *Id.* The procedural posture of the *Wooster Floral* case is an appeal, but the principal remains the same—a party cannot raise a new argument in a reply brief that is not addressed in its merit brief.

Although this Court is not bound by the United States District Court for the Eastern District of Missouri, this federal court may have said it best when it held that waiting to offer case law support in a reply memorandum for summary judgment “smacks of sandbagging.” *See Jones v. Slay*, 61 F. Supp. 3d 806 (E.D. Mo. 2014) (fn. 5). Regardless of the jurisdiction or procedural posture, the principal remains applicable. Further, *Slay* is directly applicable here because the State in the instant case waited to offer case law support (the *Deem* Test) until its Reply. *See* Def. Reply to Pl. Response to Def. Mot. to Dismiss at 4. Defendant's “mistaken belief” should not equate to a remedy for the State's tactical and strategic error of failing to comprehensively raise many elements and pathways in its Motion to Dismiss. *Id.* at 5.

The State was put on notice by Richter's Complaint alleging in the first and last paragraphs that Richter did not commit the crimes of which he was convicted, yet the State choose to file a Motion to Dismiss that failed to thoroughly address the most relevant elements of the subject statute.

The State had ample time to draft a comprehensive motion to dismiss addressing why Richter could not satisfy each pathway to satisfy all elements. The State chose not to file such a motion, but instead filed a Motion to Dismiss with merely one page of “substantive” material, and now raises new arguments and case law support for the first time in a Reply that Richter has no inherent procedural right to respond to.

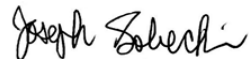
Because the State did not even mention or allude to the second or third pathway (actual innocence or that no offense was committed by any person) in its Motion to Dismiss, Richter had no reason or obligation to address in his response whether disorderly conduct is a lesser included offense of inciting to violence. Because the State improperly chose to save this argument and the corresponding case law of the *Deem* Test for its reply memorandum, the Court should strike that portion of the Defendant's Reply. This contention is strengthened by established precedent in Ohio courts.

CONCLUSION

There is no question that the State did not raise the second or third pathway of the fifth element necessary to be declared a wrongfully imprisoned individual in its Motion to Dismiss. The State should not be able to argue that disorderly conduct is a lesser included offense of inciting to violence and that Richter conceded that an offense was committed in its Reply. Therefore, Richter requests that this Honorable Court strike Section II, spanning pages 3-5, of the State's Reply. A Proposed Order is attached as Exhibit A in conformity with Local Rule 5.04(C). Alternatively, should this Court deny the Motion to Strike, Richter respectfully requests 14 days to respond to what is tantamount to a second motion to dismiss raising new arguments.

Dated: January 5, 2023

Respectfully submitted,



Joseph Sobecki

Ohio Bar Number: 101714

405 Madison Avenue, Suite 910

Toledo, Ohio 43604

Direct: (419) 283-9282

Office: (419) 242-9908

Facsimile: (419) 242-9937

joseph@josephsobecki.com

Attorney for Plaintiff Arthur N. Richter

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via electronic mail on January 5, 2023, to all counsel or parties of record on the service list below.



Joseph Sobecki

SERVICE LIST

State of Ohio

c/o Ohio Attorney General David Yost
Senior Assistant Attorney General Andrew Gatti
30 East Broad Street, 23rd Floor
Columbus, Ohio 43215
Office: (614) 644-7233
Facsimile: (855) 665-2568
andrew.gatti@ohioago.gov

Applicant Details

First Name **Godard**
 Last Name **Solomon**
 Citizenship Status **U. S. Citizen**
 Email Address gs3149@columbia.edu
 Address

Address**Street****350 West 110th Street Apt. 2F****City****New York****State/Territory****New York****Zip****10025****Country****United States**

Contact Phone Number **7864739772**

Applicant Education

BA/BS From **University of Miami**
 Date of BA/BS **May 2021**
 JD/LLB From **Columbia University School of Law**
<http://www.law.columbia.edu>

Date of JD/LLB **May 17, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Columbia Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Frederick Douglass Moot Court**

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Price, Rebecca
Rebecca_Price@nysd.uscourts.gov
212-805-0650

Baylor, Amber
aab51@columbia.edu
(212) 854-8221

Johnson, Olatunde
ojohns@law.columbia.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

GODARD SOLOMON II

350 West 110th Street, Apt. 2F, New York, NY 10025 • (786) 473-9772 • gs3149@columbia.edu

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court
Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

I am a rising third-year student and Forum Editor for the *Columbia Law Review* at Columbia Law School. I write to apply for a clerkship in your chambers beginning in 2025 or any term thereafter.

I hope to pursue a career in trial advocacy and aim to gain practice experience with our federal court system by serving as a clerk. Strong research and writing skills are strengths that I bring to this position. As a participant in the Mediation Clinic, I got experience working with judges in various forums, conducting case management, and navigating dispute resolution. At Columbia, I have honed my research and writing skills by working as a teaching assistant in Civil Procedure for Professor Johnson, a legal research extern at MediaLab AI, and as both a competitor and coach for the Frederick Douglass Moot Court team at Columbia. Currently, I serve on the Administrative Board of the *Columbia Law Review* as a Forum Editor, where I review potential legal scholarship for publication and make substantial edits to selected pieces. I would appreciate the opportunity to apply these skills in a clerkship position.

Enclosed please find a resume, transcript, and writing sample. Following separately are letters of recommendation from Professors Amber Baylor (212-854-8221, abaylor@law.columbia.edu), Olatunde C. Johnson (212-854-8387, ojohns@law.columbia.edu), and Rebecca Price (212-805-0650, Rebecca_Price@nysd.uscourts.gov).

Thank you for your consideration. Please do not hesitate to contact me should you need any additional information.

Respectfully,

Godard Solomon II

GODARD SOLOMON II

350 West 110th Street, Apt. 2F, New York, NY 10025 • (786) 473-9772 • gs3149@columbia.edu

EDUCATION

Columbia Law School, New York, NY

J.D. expected May 2024

Honors: *James Kent Scholar*, 2022-23

NEBSA 2022 Regional Moot Court Competition, Second Place Winner

Activities: *Columbia Law Review*, Administrative Board (Forum Editor) 2023-24

Frederick Douglass Moot Court, Team Coach 2022-23, Competitor 2021-22

Teaching Fellow for Professor Olatunde Johnson (Civil Procedure), Fall 2022

Latinx Law Students Association, Vice-President 22-23, 1L Representative 21-22

Mediation Clinic, Spring 2023, Fall 2023

University of Miami, Coral Gables, FL

B.A., *summa cum laude*, received May 2021

Majors: Political Science and Public Administration

Minors: Sociology and Studio Art

Honors: Foote Fellow Honors Student, Ronald A. Hammond Scholar, Butler Center Vice

President's Award for Service, Omicron Delta Kappa Honor Society

Activities: Mock Trial Association, President

Inspire U Academy Mentorship Program, Vice-President

Student Government, Campus Liaison Council Member

EXPERIENCE

Gibson, Dunn & Crutcher LLP, New York, NY

Summer Associate

May 2023 – July 2023

Completed several litigation assignments, including a research memorandum in preparation for a trial dealing with insider trading and a research memorandum on contract disputes in a bankruptcy matter.

MediaLab AI Inc., Brooklyn, NY

Extern

August 2022 – December 2022

Conducted various research assignments for the in-house legal department, including memorandums on SEC regulations and employment laws in NYC. Worked with the Genius and WorldStarHipHop brands.

White & Case LLP, Miami, FL

Summer Associate

May 2022 – July 2022

Completed several litigation assignments, including a legal memorandum on SPACs and a caselaw review on class actions in Florida. Researched emerging bankruptcy cases for a team of associates.

Shadowed the Office Executive Partner during oral arguments before the Florida Supreme Court.

SEO Law Fellow

May 2021 – July 2021

Performed legal research and writing, document review, deposition summaries, and presentations for pressing legal matters. Contributed to ongoing projects in International Arbitration, Commercial Litigation, Financial Restructuring, White Collar Crime, and Pro-Bono.

University of Miami School of Law Library, Coral Gables, FL

Student Employee

September 2017 – May 2021

Assisted with patron services, shelving books, and maintaining the book collection. Trained new student employees on library duties and the Library of Congress book classification system.

The Pollack Law Firm, Coral Gables, FL

Legal Intern

May 2019 – December 2019

Conducted research for maritime and personal injury cases. Wrote deposition summaries, assisted with filing documents, organized pleadings, and shadowed attorneys during trial and depositions.

LANGUAGE SKILLS: Spanish (proficient)

INTERESTS: Glass-blowing, Caribbean culture, saltwater fishing



COLUMBIA UNIVERSITY OFFICIAL TRANSCRIPT

THIS OFFICIAL TRANSCRIPT HAS BEEN TRANSMITTED ELECTRONICALLY AND IS INTENDED SOLELY FOR THE RECIPIENT'S USE.

Recipient:

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gs3149@columbia.edu

Student:

Godard Solomon

gs3149@columbia.edu

Statement of Authenticity

This transcript was requested following all applicable state and federal laws, and is the official transcript of the student identified above. This official transcript has been transmitted electronically to the recipient identified above and is intended solely for use by that recipient. If you are not the intended recipient, please notify the Columbia University Office of the Registrar at (212) 854-4400. It is not permissible to replicate this document or forward it to any person or organization other than the identified recipient. Release of this record or disclosure of its contents to any third party without written consent of the record owner is prohibited.

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OFFICE OF THE UNIVERSITY REGISTRAR

1140 Amsterdam Avenue

205 Kent Hall, Mail Code 9202

New York, New York 10027

(212) 854-4400

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Godard Solomon
 SSN#: XXX-XX-1759
 SCHOOL: SCHOOL OF LAW

CANDIDACY: Juris Doctor (Doctor of Law)
 PROGRAM: LAW

PROGRAM TITLE: LAW

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
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Fall 2021

LAW	L	6101 CIVIL PROCEDURE	4.00	A
LAW	L	6105 CONTRACTS	4.00	B
LAW	L	6113 LEGAL METHODS	1.00	CR
LAW	L	6115 LEGAL PRACTICE WORKSHOP I	2.00	P
LAW	L	6118 TORTS	4.00	B

Spring 2022

LAW	L	6108 CRIMINAL LAW	3.00	B+
LAW	L	6116 PROPERTY (FOUNDATION)	4.00	B
LAW	L	6121 LEGAL PRACTICE WORKSHOP I	1.00	P
LAW	L	6133 CONSTITUTIONAL LAW	4.00	B+
LAW	L	6177 LAW AND CONTEMPORARY SOCIETY	3.00	B+
LAW	L	6667 FREDERICK DOUGLASS MOOT C	0.00	CR

Fall 2022

LAW	L	6241 EVIDENCE	3.00	B+
LAW	L	6675 MAJOR WRITING CREDIT	0.00	CR
LAW	L	6683 SUPERVISED RESEARCH PAPER	2.00	A
LAW	L	6822 TEACHING FELLOWS	4.00	CR
LAW	L	6867 INDEPENDENT MOOT CT COACH	1.00	CR
LAW	L	8101 EX. IN-HOUSE COUNSEL	2.00	A-
LAW	L	8101 EX. IN-HOUSE COUNSEL	2.00	CR

Spring 2023

LAW	L	6169 LEGISLATION AND REGULATION	4.00	A-
LAW	L	6683 SUPERVISED RESEARCH PAPER	2.00	A
LAW	L	6867 INDEPENDENT MOOT CT COACH	1.00	CR
LAW	L	9239 MEDIATION CLINIC	4.00	A+
LAW	L	9239 MEDIATION CLINIC	3.00	CR

This official transcript was produced on
 JUNE 09, 2023.



SEAL OF COLUMBIA UNIVERSITY
 IN THE CITY OF NEW YORK

Barry S. Kane

Barry S. Kane
 Associate Vice President and University Registrar

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205 KENT HALL, MAIL CODE 9202
NEW YORK, NEW YORK 10027
(212) 854-4400



SEAL OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

Columbia College, Engineering and Applied Science, General Studies, Graduate School of Arts and Sciences, International and Public Affairs, Library Service, Human Nutrition, Nursing, Occupational Therapy, Physical Therapy, Professional Studies, Special Studies Program, Summer Session
A, B, C, D, F (excellent, good, fair, poor, failing). NOTE: Plus and minus signs and the grades of **P** (pass) and **HP** (high pass) are used in some schools. The grade of **D** is not used in Graduate Nursing, Occupational Therapy, and Physical Therapy.

American Language Program, Center for Psychoanalytic Training and Research, Journalism

P (pass), **F** (failing). Grades of **A, B, C, D, P** (pass), **F** (failing) — used for some offerings from the American Language Program Spring 2009 and thereafter.

Architecture

HP (high pass), **P** (pass), **LP** (low pass), **F** (failing), and **A, B, C, D, F** — used June 1991 and thereafter **P** (pass), **F** (failing) — used prior to June 1991.

Arts

P (pass), **LP** (low pass), **F** (fail), **H** (honors) used prior to June 2015.

Business

H (honors), **HP** (high pass), **P1** (pass), **LP** (low pass), **P** (unweighted pass), **F** (failing); plus (+) and minus (-) used for **H, HP** and **P1** grades Summer 2010 and thereafter.

College of Physicians and Surgeons

H (honors), **HP** (high pass), **P** (pass), **F** (failing).

College of Dental Medicine

H (honors), **P** (pass), **F** (failing).

Law

A through **C** [plus (+) and minus (-) with **A** and **B** only], **CR** (credit - equivalent to passing), **F** (failing) is used beginning with the class which entered Fall 1994. Some offerings are graded by **HP** (high pass), **P** (pass), **LP** (low pass), **F** (failing). **W** (withdrawn) signifies that the student was permitted to drop a course, for which he or she had been officially registered, after the close of the Law School's official Change of Program (add/drop) period. It carries no connotation of quality of student performance, nor is it considered in the calculation of academic honors.

E (excellent), **VG** (very good), **G** (good), **P** (pass), **U** (unsatisfactory), **CR** (credit) used from 1970 through the class which entered in Fall 1993.

Any student in the Law School's Juris Doctor program may, at any time, request that he or she be graded on the basis of Credit-Fail. In such event, the student's performance in every offering is graded in accordance with the standards outlined in the school's bulletin, but recorded on the transcript as Credit-Fail. A student electing the Credit-Fail option may revoke it at any time prior to graduation and receive or request a copy of his or her transcript with grades recorded in accordance with the policy outlined in the school bulletin. In all cases, the transcript received or requested by the student shall show, on a cumulative basis, all of the grades of the student presented in single format — i.e., all grades shall be in accordance with those set forth in the school bulletin, or all grades shall be stated as Credit or Fail.

Public Health

A, B, C, D, F - used Summer 1985 and thereafter. **H** (honors), **P** (pass), **F** (failing) — used prior to Summer 1985.

Social Work

E (excellent), **VG** (very good), **G** (good), **MP** (minimum pass), **F** (failing).

A though **C** is used beginning with the class which entered Fall 1997. Plus signs used with **B** and **C** only, while minus signs are used with all letter grades. The grade of **P** (pass) is given only for select classes.

OTHER GRADES USED IN THE UNIVERSITY

AB = Excused absence from final examination.

AR = Administrative Referral awarded temporarily if a final grade cannot be determined without additional information.

AU = Audit (auditing division only).

CP = Credit Pending. Assigned in graduate courses which regularly involve research projects extending beyond the end of the term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

F* = Course dropped unofficially.

IN = Work Incomplete.

MU = Make-Up. Student has the privilege of taking a second final examination.

R = For the Business School: Indicates satisfactory completion of courses taken as part of an exchange program and earns academic credit.

R = For Columbia College: The grade given for course taken for no academic credit, or notation given for internship.

R = For the Graduate School of Arts and Sciences: By prior agreement, only a portion of total course work completed. Program determines academic credit.

R = For the School of International and Public Affairs: The grade given for a course taken for no academic credit.

UW = Unofficial Withdrawal.

UW = For the College of Physicians and Surgeons: Indicates significant attempted coursework which the student does not have the opportunity to complete as listed due to required repetition or withdrawal.

W = Withdrew from course.

YC = Year Course. Assigned at the end of the first term of a year course. A single grade for the entire course is given upon completion of the second term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

OTHER INFORMATION

NOTE: All students who cross-register into other schools of the University are graded in the **A, B, C, D, F** grading system regardless of the grading system of their own school, except in the schools of Arts (prior to Spring 1993) and in Journalism (prior to Autumn 1992), in which the grades of **P** (pass) and **F** (failing) were assigned. Notations at the end of a term provide documentation of the type of separation from the University.

% of **A** Effective fall 1996: Transcripts of Columbia College students show the percentage of grades in the **A (A+, A, A-)** range in all classes with at least 12 grades, the mark of **R** excluded. Calculations are taken at two points in time, three weeks after the last final examination of the term and three weeks after the last final of the next term. Once taken, the percentage is final even if grades change or if grades are submitted after the calculation. For additional information about the grading policy of the Faculty of Columbia College, consult the College Bulletin.

KEY TO COURSE LISTINGS

A course listing consists of an area, a capital letter(s) (denotes school bulletin) and the four digit course number (see below).

The **capital letter** indicates the University school, division, or affiliate offering the course:

A	Graduate School of Architecture, Planning, and Preservation
B	School of Business
BC	Barnard College
C	Columbia College
D	College of Dental Medicine
E	School of Engineering and Applied Science
F	School of General Studies
G	Graduate School of Arts and Sciences
H	Reid Hall (Paris)
J	Graduate School of Journalism
K	School of Library Services/Continuing Education (effective Fall 2002)
L	School of Law
M	College of Physicians and Surgeons, Institute of Human Nutrition, Program in Occupational Therapy, Program in Physical Therapy, Psychoanalytical Training and Research
N	School of Nursing

O	Other Universities or Affiliates/Auditing
P	School of Public Health
Q	Computer Technology/Applications
R	School of the Arts
S	Summer Session
T	School of Social Work
TA-TZ	Teachers College
U	School of International and Public Affairs
V	Interschool Course
W	Interfaculty Course
Y	Teachers College
Z	American Language Program

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The **first digit** of the course number indicates the level of the course, as follows:

0	Course that cannot be credited toward any degree
1	Undergraduate course
3	Undergraduate course, advanced
4	Graduate course open to qualified undergraduates
5	Graduate course open to qualified undergraduates
6	Graduate course
7	Graduate course
8	Graduate course, advanced
9	Graduate research course or seminar

Note: Level Designations Prior to 1961:

1-99 Undergraduate courses
100-299 Lower division graduate courses
300-999 Upper division graduate courses

The term designations are as follows:
X=Autumn Term, **Y**=Spring Term, **S**=Summer Term
Notations at the end of a term provide documentation of the type of separation from the University.

THE ABOVE INFORMATION REFLECTS GRADING SYSTEMS IN USE SINCE SPRING 1982. THE CUMULATIVE INDEX, IF SHOWN, DOES NOT REFLECT COURSES TAKEN BEFORE SPRING OF 1982. ALL TRANSCRIPTS ISSUED FROM THIS OFFICE ARE OFFICIAL DOCUMENTS. TRANSCRIPTS ARE PRINTED ON TAMPER-PROOF PAPER, ELIMINATING THE NEED FOR SIGNATURES AND STAMPS ON THE BACK OF ENVELOPES. FOR CERTIFICATION PURPOSES, A REPRODUCED COPY OF THIS RECORD SHALL NOT BE VALID. THE HEAT-SENSITIVE STRIP, LOCATED ON THE BOTTOM EDGE OF THE FACE OF THE TRANSCRIPT, WILL CHANGE FROM BLUE TO CLEAR WHEN HEAT OR PRESSURE IS APPLIED. A BLUE SIGNATURE ALSO ACCOMPANIES THE UNIVERSITY SEAL ON THE FACE OF THE TRANSCRIPT.

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in reference to Godard Solomon who is applying for a post-graduate clerkship in your chambers. Godard was a student in Columbia Law School's Mediation Clinic this past Spring, 2023, which I taught while Alex Carter (the Clinic Director) was on sabbatical. This is a 7-credit clinic which incorporates an initial mediation training of 30-hours, a weekly 3-hour seminar, and multiple live-client mediations over the course of the semester. I spent a lot of time with Godard this semester. He earned the top grade in this seminar/clinic and I am delighted to recommend him.

Godard's performance in both the seminar and clinic were exceptionally strong. In terms of academics, Godard's presence in the seminar raised the quality of conversation. He was always prepared for class and frequently integrated information from other classes and disciplines. As a mediator, Godard came to the clinic with excellent core skills, and he made the most of the actual mediation opportunities to develop and refine his approach. Because of his interest, he became the primary student at a mediation placement in Bronx Civil and Small Claims courts. Godard was absolutely taken with the day-to-day of the Court, and he had the opportunity to work and interact with judges, court staff, attorneys, and pro se litigants. His presence and professionalism were instrumental in forging a link between that court and the mediation clinic. It's important to mention that the mediation clinic students are meant to do their work in pairs. Godard's partner was unexpectedly ill during the semester and Godard not only covered both of their work but was enthusiastic in pairing with other students, and with me. He created an environment where his partner could seamlessly reenter when she was able.

Godard's interests run well beyond mediation. While at Columbia he has been in leadership roles in student organizations, on Columbia Law Review, and has participated and coached moot court. In addition to work in big law, Godard is also interested in criminal justice, sentencing reform, and racial inequities in carceral systems.

Having spent a lot of time with Godard this semester, I have found him to be a rare mix of highly motivated/competent while also being an unfailingly delightful person to be around. As someone who also clerked, I know that the chambers environment is small and, often, intense. I cannot imagine a better person to have in that type of environment. Godard is genuine, friendly, and interested in others. He sets very high standards with the goal not just of his own advancement but with the betterment of the whole system in mind. I hope his application will be given serious consideration. As someone who myself benefited from a post-graduate clerkship, I know how important it is to be able to do meaningful work for the court, and I am confident he will add great value.

Please feel free to contact me if you have any questions. I can be reached at 917-596-7826.

Sincerely,
Rebecca Price

Rebecca Price - Rebecca_Price@nysd.uscourts.gov - 212-805-0650

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to strongly recommend Godard Solomon for a judicial clerkship. I served as a supervisor for Godard's Note. Godard's diligence, organization, and creativity will be invaluable in his work as a clerk.

Godard demonstrated excellent preparation in the Note writing project. He shared his interest in sentencing reform, the roots of which he tracks back to an early opportunity when he shadowed a judge as a youth. His initial outlines were well-researched and thorough. He reviewed numerous cases and legal frameworks in support of his thesis. His preparation made working with him rewarding and fruitful as his project progressed.

Godard approached the Note with a strong case for sentencing reform. Godard kept the racial justice core of his project in focus as he researched varied proposals for reform in federal sentencing. I admire how he anticipated barriers and prepared counterarguments to his innovative thesis. Godard is impressive in the development of an innovative thesis and his exploration of options to transverse counterarguments.

Organized and direct, Godard facilitated our supervision meetings. He communicated updates and developments in between our monthly meetings. Each of his outlines and drafts were timely and complete. Godard responded in-depth all feedback.

During our conversations I learned of Godard's long-standing interest in sentencing reform. He was driven in the research and committed to creating new pathways towards equity. His Note is aspirational but Godard's interest in racial equity is heavily based in the realities of the court. Godard is not afraid to present new ideas and solicit opinions on how they might succeed.

Godard has a strong sense of his path forward, the work he wants to do and the contributions will to make, particularly towards racial equity in federal courts. I recommend Godard without reservation for a judicial clerkship.

Please feel free to contact me with any inquiries regarding Godard and his preparation for this position. I can be reached at abaylor@law.columbia.edu.

Sincerely,

Amber Baylor

Amber Baylor - aab51@columbia.edu - (212) 854-8221

June 09, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend Godard Solomon for a clerkship in your chambers. Godard was a star student in my Civil Procedure class and an excellent teaching assistant for me this past semester. I am confident that he has the top-notch analytical, writing, and research skills necessary to be a terrific clerk in your chambers.

Throughout the semester, Godard was one of the strongest students in my Civil Procedure course. The course covers the essentials of the federal litigation process, and complex questions such as federal jurisdiction, class actions, and choice of law. Beyond being prepared to discuss the caselaw, rules, and statutes each session, Godard was adept and eager to take on difficult hypotheticals. In addition, he offered thoughtful insights into the strategic and policy dimensions of procedural law. Godard's final exam earned him an "A" in the course, a very difficult achievement given the challenging curve in place for first-year students.

Godard's interest in civil procedure, his excellent grasp of the doctrine, and his obvious diligence led me to ask him to serve as my teaching assistant. Each week this past fall, Godard helped lead a session in which he reviewed the material for first-year students and guided them through elaborate hypotheticals. Godard was a formidable teaching assistant. He was extremely effective at explaining complex doctrine to students. Godard also conducted helpful research for me that semester on the use of remittitur in federal courts to reduce compensatory and punitive damages in discrimination cases.

Godard has a deep interest in litigation, and in addition to his work as a teaching assistant, he has consistently pursued opportunities to sharpen his litigation skills. Godard won a top award in a national moot court competition, and this past year served as a moot court coach. In addition, he has worked in private law litigation for several summers stemming back to his time as an undergraduate.

Godard's personal qualities will be an asset in your chambers. Working with Godard was an absolute pleasure. He works hard and is professional and responsive. Godard was extremely generous and patient with often anxious first-year students, giving an extraordinary amount of his time to ensure that the students understood the concepts. And he also worked very well with the other TAs. Godard's collegiality and leadership qualities have led him to play a prominent role in many student organizations. This past year, Godard was elected to the Administrative Board of the Columbia Law Review. In addition, he organized and led mentoring and professional development activities as Vice-President of the Latin American Law Students Association.

In sum, I am confident that Godard has the skills and temperament to be a terrific addition to your chambers. If you would like to discuss his application further, please contact me at ocj2102@columbia.edu.

Respectfully,

Olatunde C. A. Johnson
Ruth Bader Ginsburg '59 Professor of Law

Olatunde Johnson - ojohns@law.columbia.edu

GODARD SOLOMON II

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CLERKSHIP APPLICATION WRITING SAMPLE

This writing sample is a brief written during my first year of law school for the National Black Law Students Association's 2021-2022 Thurgood Marshall Moot Court Competition (formerly named the Frederick Douglass Moot Court Competition). The statement of the case, statement of jurisdiction, summary of the argument, table of contents, table of authorities, cover page, opinions below, and question presented have been omitted from this sample. This case takes place in an imaginary jurisdiction, so this brief contains citations to various circuit courts. As part of the competition, competitors are assigned a party at random. As a result, the arguments in this brief do not necessarily align with my personal views. This writing sample has been lightly edited for grammar and clarity.

This brief is written for the Petitioner the United States. The question before the Court is: *Whether attempt and conspiracy offenses qualify as predicate offenses under § 4B1.1 for the purposes of the Career Offender status.* In this case, the two Respondents are Jazz Jeffries ("Jeffries") and Cole Brown ("Brown"). Both individuals took part in the armed robbery of Fresh Prince Smith Medical Center in 2020 and were charged with Conspiracy to Commit Armed Robbery and five Counts of Armed Robbery. A presentence report was generated and concluded that their prior three felony, predicate offenses triggered the Career Offender status in the guidelines (§ 4B1.1), which resulted in an increase to Criminal History Category VI. Brown and Jeffries objected to this enhancement. The district court rejected this objection, but the circuit court reversed the decision.

ARGUMENT

- I. Conspiracy offenses qualify as predicate offenses under § 4B1.1 for the purposes of the Career Offender status because conspiracy is explicitly listed in the commentary of § 4B1.2.**

A. Standard of Review

When a court is examining an interpretation of the Sentencing Guidelines conducted by a lower court, a de novo review is appropriate. *See United States v. Hernandez-Galvan*, 632 F.3d 192, 196 (5th Cir. 2011) (discussing a de novo review of a defendant's prior conviction under the Sentencing Guidelines).

- B. The District Court correctly applied the commentary of § 4B1.2 because the commentary aligns with both the intent of Congress and the Sentencing Commission and the commentary is not in conflict with the guidelines.**

The core question is whether the District Court properly applied the commentary of § 4B1.2 in ruling that conspiracy offenses qualify as predicate offenses under § 4B1.1 for the purposes of the Career Offender enhancement. The District Court's ruling was valid for two reasons: (1) the commentary in § 4B1.2 aligns with the intention of both Congress and the Sentencing Commission and (2) the commentary in § 4B1.2 does not create a conflict with the guideline itself. For these reasons, the District Court ruling should be upheld.

- i. The District Court correctly applied the commentary of § 4B1.2 to expand the eligible predicate offenses because the commentary aligns with the intention of Congress and the Sentencing Commission.**

The definition of controlled substance offense as used in § 4B1.2 is as follows:

The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

U.S. Sent'g Guidelines Manual § 4B1.2(b) (U.S. Sent'g Comm'n 2016). The commentary adds attempt and conspiracy to the offenses that are eligible under the controlled substances offense definition. *Id.* § 4B1.2 cmt. n.1. For issues surrounding the interpretation of the Sentencing Guidelines, courts start by turning to Congress and the Sentencing Commission to uncover the correct interpretation. *See United States v. Hill*, 963 F.3d 528, 530 (6th Cir. 2020).

Congress empowers the Sentencing Commission to promulgate their guidelines. 28 U.S.C. § 994(a). The commission is comprised of experts in this field and are deemed by Congress to be the best authority for creating sentencing guidelines. *Id.* The guidelines and any changes to them are also subject to approval by Congress. *Id.* at § 994(p).

When searching for context and meaning behind a guideline or law, this Court has said that when commentary is provided, a Court has key insight into the correct interpretation of the rule. *See Stinson v. United States*, 508 U.S. 36, 42 (1993) (discussing the controlling nature of sentencing guideline commentary for correct application by sentencing courts). The commentary does indeed serve a purpose: it offers a critical lens through which the Court should apply and interpret the guidelines as the Commission's experts intended. *Id.* at 45 (“The functional purpose of commentary (of the kind at issue here) is to assist in the interpretation and application of those rules, which are within the Commission's particular area of concern and expertise and which the Commission itself has the first responsibility to formulate and announce.”).

When looking at the relationship between commentary and guidelines, specifically for controlled substance offenses, a court should consider the

purpose behind that relationship when it was being drafted. *Id.* Congressional intent leans in favor of weighing the commentary equal to the guideline, as Congress has prescribed the same punishment for both conspiracy and substantive drug offenses. *See* 21 U.S.C. § 846 (stating that “[a]ny person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense”). This shows that the alleged gap between the commentary and the guidelines is not as significant as it appears seeing as both offenses are weighed equally by Congress.

In addition, in all the years that the Guideline and commentary have existed, they have never been formally amended to remove commentary note one, which adds in conspiracy offenses to the guideline. *See* U.S. Sent'g Guidelines Manual § 4B1.2 cmt. n.1 (U.S. Sent'g Comm'n 2016) (showing that the guideline has been amended fifteen times and has never excluded inchoate offenses from the guidelines). This shows that the Commission, in line with Congress, intends for inchoate offenses to remain in the commentary as sound authority.

In this case, the commentary in §4B1.2 helps to illuminate that conspiracy to commit a controlled substance offense is within the meaning of controlled substance offenses. The Sentencing Commission was intentional in not only adding commentary to the guideline, but also in specifically adding in crimes like conspiracy, which Congress believed to be equal to the actual crime based on their assessment of penalties. *See* § 846. The defendants in this case have prior charges for Conspiracy to Distribute Controlled Dangerous Substances, so based on the integral commentary, these prior convictions are considered felony, controlled substance offenses. With no amendments to point to, the commentary in § 4B1.2 is valid under the Sentencing Commission.

Based on this assessment, the District Court's application of the commentary note in § 4B1.2 to add in conspiracy offenses is valid because the commentary does not contradict the intention of Congress nor the Sentencing Commission.

ii. The District Court’s application of the commentary in §4B1.2 to expand the eligible predicate offenses is justified because the commentary is not in conflict with the guidelines.

A dispute can arise when applying commentary to a set of sentencing guidelines leads to a conflict in meaning. If the commentary does not specifically remove an offense stated in the guideline nor does it add one that is specifically left out, the commentary is not in conflict with the guidelines. *United States v. Lewis*, 963 F.3d 16, 22 (1st Cir. 2020). A mere difference between the commentary and the guidelines is likely not sufficient to invalidate the commentary. *Id.* Also, if the commentary is not in conflict with nor clearly arbitrary or unreasonable, the commentary should once again not be invalidated. *United States v. Fiore*, 983 F.2d 1, 2 (1st Cir. 1992). Having survived those standards, if a Court then decides to use the commentary to interpret a set of guidelines, that interpretation via the commentary is sound legal authority just as if the guidelines were used alone. *United States v. Joshua*, 976 F.2d 844, 853–54 (3d Cir. 1992).

The commentary in § 4B1.2 does not list any elements or crimes that the guidelines seek to exclude, nor does it ban anything that the guidelines explicitly state. U.S. Sent'g Guidelines Manual § 4B1.2 cmt. n.1 (U.S. Sent'g Comm'n 2016). Specifically for the crime of conspiracy, the guidelines do not indicate anywhere an intention to exclude conspiracy from the meaning of controlled substance offenses. *Id.* To portray the lack of a conflict or contradiction, the guidelines and commentary can both be read together and since the guidelines do not mention conspiracy, both parts can still be true as currently listed. In addition, there is no basis to find that the commentary is unreasonable or arbitrary given the lack of any clear indication of conflict or error. As a result, it is correct to interpret the addition as valid rather than as an unlawful error.

On this issue of conflict between the guidelines and commentary, the Circuit Courts are split. However, Petitioner's argument falls on the majority side of this split. Specifically, the 2nd Circuit in *United States v. Tabb* states that only the 6th and D.C. Circuits directly exclude the commentary and would find in favor of the Respondents. 949 F.3d 81, 87 (2nd Cir. 2020). This shows that the Respondents are squarely in the minority on this issue, and that is in addition to the Supreme Court in *Stinson v. United States* also finding in favor of Petitioner's argument. 508 U.S. 36, 38 (1993).

This case is most analogous to *United States v. Lewis*, where the defendant also challenged the validity of the use of the commentary in the sentencing guidelines regarding conspiracy. 963 F.3d 16, 16 (1st Cir. 2020). Defendant had previous drug charges and the Court used his instant conspiracy charge to classify him as a Career Offender, which was ultimately upheld. *Id.* at 18. Defendants in this case are also dealing with drug charges and conspiracy, and there is no reason for the Court to depart here. The commentary is clear in its addition and is properly used here as it was in *Lewis* for the Career Offender status. *Id.* See also *United States v. Piper*, 35 F.3d 611, 613 (1st Cir. 1994) (discussing another proper use of the commentary to include prior conspiracy charges for Career Offender designation).

This case is also similar to *United States v. Fiore*, where the defendant made the same challenges for two previous conspiracy charges and wished to not be delegated as a Career Offender. 983 F.2d 1, 1 (1st Cir. 1992). The Court once again correctly chose to uphold the designation of Career Offender for the defendant given the commentary and guidelines. *Id.* This furthers the reasoning for the Court in this case to follow the precedent laid out and designate these defendants as the guidelines explicitly state.

The circuit split shows that applying the *Stinson* standard in support of Petitioner's claim is what the majority of our circuit courts would follow. The case at bar offers an opportunity for this Court to affirm the *Stinson* ruling and resolve the circuit split in favor of the majority view that using the commentary

in application note 1 of §4B1.2 to expand the eligible offenses under §4B1.1 and §4B1.2 is valid.

C. The District Court correctly sentenced Brown and Jefferies as Career Offenders because the court accurately implemented the Sentencing Guidelines as written.

The Sentencing Guidelines also provide the rules for when an offender is to be labeled as a Career Offender. The applicable rule states:

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S. Sent'g Guidelines Manual § 4B1.1(a) (U.S. Sent'g Comm'n 2016). Element three of the Career Offender rule discusses the requirement of two prior felony convictions, *Id.*, and the question arises of what can be counted as a prior felony conviction. Inchoate crimes like conspiracy can satisfy the requirement under element three so long as the conspiracy is for a crime of violence or controlled substance offense pursuant to element three. *See United States v. Lewis*, 963 F.3d 16, 22 (1st Cir. 2020). This is further supported when inchoate crimes like conspiracy are enumerated in the commentary to the guidelines. *Id.*

In the present case, there is no dispute as to the first two elements of the Career Offender rule; both defendants were at least 18 years old at the time of the current armed robbery and the robbery constituted a felony. Record at 7.

Both defendants in this case have hefty criminal records that begin from the time that they were just 15 years old, including a substantial felony record. R. at 5. Brown's record indicates two previous felony convictions for Conspiracy to Distribute a Controlled Dangerous Substance and Robbery, and then Jeffries' record shows previous felony convictions for Conspiracy to Distribute

a Controlled Dangerous Substance and Possession of a Controlled Dangerous Substance. *Id.* In addition to these felonies, both defendants each have a felony conviction for Conspiracy to Distribute a Controlled Dangerous Substance arising out of a separate incident involving a heroin drug raid. *Id.* In total, they each have three prior felonies, two of which are conspiracy charges.

The conflict arises here since the defendants seek to have their previous conspiracy charges not be considered in their sentencing. However, the analysis given earlier dictates that the commentary to the guidelines justly expands the scope of previous controlled substance offenses to include conspiracy charges. Based on that, the defendants do not just meet the third element of the Career Guidelines rule but exceed it with three previous felonies each. As a result, this case is most analogous to *Lewis*, where the Court found that the defendant could have career offender enhancement placed upon them on the basis of previous conspiracy charges. 963 F.3d at 25. There is no reason for the Court to depart from the *Lewis* precedent here since defendants also had sufficient, prior conspiracy convictions.

While the Career Offender designation will negatively impact the length of the sentence handed down to defendants, there is a strong policy argument as to why this designation is important for our criminal justice system. States and society as a whole have a sacred interest in safety, and this safety is infringed upon when criminals continue to offend the law. *See* John A. Gebauer, *Habitual Criminals and Subsequent Offenders*, 39 Am. Juris. 2d § 3. Therefore, we increase the sentences of habitual offenders; there is a desire to deter this behavior and remove these career criminals from society. *Id.* Our welfare would be harmed if we addressed each repeat crime the same way because there would be no growing incentive to not engage in deviant behavior. *Id.* Defendants in this case have committed a plethora of misdemeanors for several years and have also engaged in multiple felonies. They have availed themselves to Career Offender status and it would in fact be unjust and unsafe to not designate them as such. It would also be a disservice to Dr. Banks, the

traumatized victim in this case, for the Court to not recognize her horrific experience by not applying the proper Career Offender enhancement. A major reason for having sentencing enhancements is to recognize the heightened trauma of victims of violent crimes, *Id.*, so the Court should recognize the impact on the law-abiding victim in this case and apply the enhancement.

Based on this analysis, Brown and Jefferies would be properly classified as Career Offenders given their previous conduct. The District Court was correct in following the presentence report which designated them as such.

CONCLUSION

For the aforementioned reasons, the Supreme Court should reverse the Appellate Court's decision and reinstate the decision of the District Court, denying the objections of the Defendants and affirming the presentence reports.

Applicant Details

First Name	Charles		
Last Name	Sonenclar		
Citizenship Status	U. S. Citizen		
Email Address	csonenclar@jd24.law.harvard.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 1585 Massachusetts Avenue City Cambridge State/Territory Massachusetts Zip 02138 Country United States </td> </tr> </table>	Address	Street 1585 Massachusetts Avenue City Cambridge State/Territory Massachusetts Zip 02138 Country United States
Address			
Street 1585 Massachusetts Avenue City Cambridge State/Territory Massachusetts Zip 02138 Country United States			
Contact Phone Number	203-257-8447		

Applicant Education

BA/BS From	University of Pennsylvania
Date of BA/BS	May 2018
JD/LLB From	Harvard Law School
	https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 23, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Journal on Legislation
Moot Court Experience	Yes
Moot Court Name(s)	1L Moot Court Advocacy Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Specialized Work Experience **Death Penalty, Habeas**

Recommenders

Klarman, Michael
mklarman@law.harvard.edu
617-495-7646

Steiker, Carol
steiker@law.harvard.edu
617-496-5457

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Charles Sonenclar

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June 12, 2023

The Honorable Juan R. Sánchez
United States District Court, Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sánchez:

I am a rising 3L at Harvard Law School writing to express my excitement at the potential opportunity for a clerkship in your chambers beginning in 2024. As someone who went to college in Philadelphia, has several family members there, and plans to practice as a trial attorney in the area, I am really enthusiastic by the chance to learn how to write opinions on litigation battles in the city and make a meaningful contribution to your courtroom.

Attached please find my resume, law school transcripts, writing sample, and letters of recommendation from the following people:

- Prof. Michael Klarman, Harvard Law School, mklarman@law.harvard.edu, 617-496-2050
- Prof. Carol Steiker, Harvard Law School, steiker@law.harvard.edu, 617-496-5457

Also, my supervisor at the Federal Defender Office this past spring – Assistant Federal Defender Sonali Shahi – has happily offered to serve as an additional reference. Her email is Sonali_Shahi@fd.org and phone number is 215-928-0520.

Two particular experiences that have shaped me while in law school were interning for a United States Attorney's Office and then for a Federal Defender Office. I find the criminal justice system enormously complicated, and through working as an advocate for both victims and defendants, I developed a greater understanding and empathy for where both sides are coming from in these conflicts. I hope to bring this perspective to your chambers if I have the honor of working there.

Thank you so much for your time and consideration.

Best Regards,

Charles Sonenclar

Charles Sonenclar

1585 Massachusetts Avenue, Cambridge, MA 02138 | 203-257-8447 | csonenclar@jd24.law.harvard.edu

EDUCATION

Harvard Law School, Cambridge, MA

Candidate for J.D.

May 2024

- *Journal on Legislation*, Supervising Editor
- Professor Michael Klarman, Research Assistant
- Tenant Advocacy Project, Recruitment Chair and Staff Advocate
- HLS Softball

The George Washington University Law School, Washington, DC

Completed first year of J.D. before transferring

2021 – 2022

- Moot Court and Mock Trial Competitions

University of Pennsylvania, Philadelphia, PA

B.A. magna cum laude in History, Minor in Mathematics

May 2018

EXPERIENCE

Sullivan and Cromwell, New York, NY

Summer Associate

Summer 2023

- Writing a memorandum interpreting state business and criminal laws and how they apply to cryptocurrency
- Researching choice of law doctrine for a class action tort case governed by Swiss law to help resolve disputes around the law's principles on negligence

Federal Community Defender Office for the Eastern District of Pennsylvania, Philadelphia, PA

Capital Habeas Unit Intern

January 2023 – April 2023

- Drafted a federal habeas motion for a prisoner serving a sentence of “life without parole” arguing that his sentencing statute was unconstitutional
- Investigated a defendant's original trial for juror and prosecutorial misconduct that helped lay the foundation for his second state habeas motion

United States Attorney's Office for the District of Connecticut, Bridgeport, CT

Legal Intern

Summer 2022

- Wrote a motion in limine to preclude a defendant from raising corruption allegations that were unrelated to the defendant's criminal conduct
- Analyzed the bonus structures and advertising strategies of bank employees as part of a redlining investigation

Piper Paul Law, Westport, CT

Legal Researcher and Copywriter

2020 – 2021

- Drafted due process hearing requests for children with learning disabilities to compel school districts to design more accessible programs for their students
- Wrote blog posts on the firm's website outlining legal strategies for parents to hold schools accountable

Threshold Group, New York, NY

Senior Associate

2019 – 2020

- Designed fundraising strategies for federal and state officials to build winning political campaigns
- Raised over \$1 million for a state senator over the course of a year, the highest of any senator in the conference, placing him in a formidable position for re-election

INTERESTS

Teaching tennis, tutoring math, writing screenplays, and watching the New York Yankees

Harvard Law School

Record of: Charles B Sonenclar
Current Program Status: JD Candidate

Date of Issue: June 2, 2023
Not valid unless signed and sealed
Page 1 / 1

JD Program				Winter 2024 Term: January 02 - January 19			
First year completed at George Washington University.				2249	Trial Advocacy Workshop	~	3
					Sullivan, Ronald		
Fall 2022 Term: September 01 - December 31					Winter 2024 Total Credits:		3
2020	Capital Punishment in America	H	4		Spring 2024 Term: January 22 - May 10		
	Steiker, Carol			8017	Government Lawyer: United States Attorney Clinic	~	4
2036	Constitutional Law: Separation of Powers, Federalism, and Fourteenth Amendment	H	4	2169	Whiting, Alex		
	Klarman, Michael				Legal Profession: Public Interest Lawyering	~	3
2050	Criminal Procedure: Investigations	H	4		Wacks, Jamie		
	Crespo, Andrew				Spring 2024 Total Credits:		7
3119	Poverty Law Workshop: A Toolkit for Addressing Inequity & Homelessness	H	2		Total 2023-2024 Credits:		25
	Gwin, Elizabeth				Total JD Program Credits:		53
Fall 2022 Total Credits:				14	End of official record		
Winter-Spring 2023 Term: January 01 - May 31							
8005	Capital Punishment Clinic	CR	5				
	Steiker, Carol						
Winter-Spring 2023 Total Credits:				5			
Spring 2023 Term: February 01 - May 31							
2048	Corporations	H	4				
	Coates, John						
2079	Evidence	H	3				
	Clary, Richard						
3213	The Law of Presidential Elections	H	2				
	Schwartz, Larry						
Spring 2023 Total Credits:				9			
Total 2022-2023 Credits:				28			
Fall 2023 Term: August 30 - December 15							
2028	Comparative Constitutional Law	~	4				
	Jackson, Vicki						
2035	Constitutional Law: First Amendment	~	4				
	Fried, Charles						
2086	Federal Courts and the Federal System	~	5				
	Goldsmith, Jack						
2103	Government Lawyer	~	2				
	Whiting, Alex						
Fall 2023 Total Credits:				15			


Assistant Dean and Registrar

HARVARD LAW SCHOOL
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Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
 LL.M. (Master of Laws)
 S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).


 Assistant Dean and Registrar

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

SSN : ****-**-5448
 Gwid : G20206446
 Date of Birth: 22-FEB

Date Issued: 16-JUN-2022

Record of: Charles B Sonenclar

Page: 1

Student Level: Law
 Admit Term: Fall 2021

Issued To: CHARLES SONENCLAR
 CSONEN@LAW.GWU.EDU

REFNUM:76459290

Current College(s): Law School
 Current Major(s): Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
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GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2021

Law School
 Law

LAW 6202	Contracts Swaine	4.00	A	
LAW 6206	Torts Turley	4.00	A	
LAW 6212	Civil Procedure Schaffner	4.00	A	
LAW 6216	Fundamentals Of Lawyering I Schwartz	3.00	A	
Ehrs	15.00 GPA-Hrs	15.00	GPA	4.000
CUM	15.00 GPA-Hrs	15.00	GPA	4.000
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

Spring 2022

Law School
 Law

LAW 6208	Property Kieff	4.00	A-	
LAW 6209	Legislation And Regulation Schwartz	3.00	A+	
LAW 6210	Criminal Law Weisburd	3.00	A	
LAW 6214	Constitutional Law I Cheh	3.00	A	
LAW 6217	Fundamentals Of Lawyering II Schwartz	3.00	A	
Ehrs	16.00 GPA-Hrs	16.00	GPA	3.979
CUM	31.00 GPA-Hrs	31.00	GPA	3.989
Good Standing				
GEORGE WASHINGTON SCHOLAR				
TOP 1% - 15% OF THE CLASS TO DATE				

Fall 2022

LAW 6218	Prof Responsibility & Ethics	2.00	-----	
LAW 6250	Corporations	4.00	-----	
LAW 6360	Criminal Procedure	3.00	-----	
LAW 6387	Voting Rights	2.00	-----	
LAW 6883	Counterintelligence Law&Policy	2.00	-----	
Credits In Progress: 13.00				
***** CONTINUED ON NEXT COLUMN *****				

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
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***** TRANSCRIPT TOTALS *****

Earned Hrs GPA Hrs Points GPA

TOTAL INSTITUTION 31.00 31.00 123.67 3.989

OVERALL 31.00 31.00 123.67 3.989

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://go.gwu.edu/corcorantranscriptkey>

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I/ and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt; CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

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June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in support of the clerkship application of Mr. Charles Sonenclar, who is a member of the Harvard Law School Class of 2024. Charles was a student in my Constitutional Law class in the fall of 2022, and he did some work for me as a research assistant in the spring of 2023. Charles was a stellar contributor to class discussion in Constitutional Law, and he wrote a terrific exam for the course (narrowly missing a Dean's Scholar Prize). Charles's work as a research assistant has been exemplary. Charles is also personally delightful—upbeat, good-natured, and personable. I am confident Charles will be a sensational judicial law clerk, and I recommend him to you with great enthusiasm.

The following notes recorded in my Constitutional Law diary at the end of the fall semester capture my positive opinion of Charles.

Sonenclar, Charles: Really liked him. Asked a lot of questions in class, very smart. Also stuck around most days after class and asked questions then as well. Very attentive. Always with a smile on his face.

During a review session I did for the class on Zoom at the end of the semester, I noted a very good question Charles asked about the peculiar doctrine the Court has sometimes applied in equal protection cases: minimal rationality review "with bite." Charles asked for some clarification—which is not easy to provide—on the concept of "animus," which is a favorite of Justice Anthony Kennedy, as well as some elaboration on the notion of "immutability."

The one thing about Charles that most impressed me was his frequent willingness to stick around after class (which perhaps 15–25 percent of the students did on any particular occasion), usually ask a question, and always maintain a posture of cheerfulness and genuine intellectual curiosity.

Charles wrote an excellent exam in Constitutional Law. On the three questions, he earned, respectively, a 4.1 (a high "A"), a 3.85 (right on the border line between an "A-" and an "A") and another 3.85. Charles earned the highest Honors grade in the class. In other words, had I been permitted to award one more Dean's Scholar Prize for the course, Charles would have received it. That places his exam in the top 10 percent of the class.

Please allow me to provide a few more specifics regarding Charles's Constitutional Law exam. One of the three questions on the exam, which constituted 40 percent of the students' grade, consisted of a series of pairs of cases/opinions/Justices/etc., which the students were asked to compare and contrast. I have always felt that this sort of question best enables me to assess the students' mastery of the course materials as well as gaining insight into their analytical abilities. Here are a few of Charles's answers to these questions.

One of these questions asked the students to compare and contrast "the 'Major Questions Doctrine' (e.g., *West Virginia v. EPA*) and *Rucho v. Common Cause*." Charles responded that "the two cases demonstrate the hypocrisy of the Court in when it determines it does/doesn't have judicially manageable 'tests' to intervene in cases. In *Rucho*, the Court rejected a number of tests that were more specific and probably easier to apply than the Major Questions Doctrine."

In response to another of these questions that asked the students to compare and contrast "the relationship between *The Slaughterhouse Cases* and *Lochner v. New York* with the relationship between *Plessy v. Ferguson* and *Brown v. Board of Education*," Charles wrote: "In both relationships, the Court took back power in a field which they had previously withdrawn from. In *Slaughterhouse* the Court largely withdrew from enforcing unenumerated rights but started doing so again in *Lochner*. Similarly in *Plessy*, the Court limited the reach of the equal protection clause but then expanded it in *Brown*."

Another such question asked the students to compare and contrast "*Brown v. Board of Education II* with Justice Powell's opinion in *Regents of the University of California v. Bakke*." To this question, Charles responded: "Both opinions appeased the opposing sides of a debate but ended up with unclear holdings. *Brown II* tried to appease proponents and detractors of integration and ended up with an ambiguous standard of 'all deliberate speed,' while *Bakke* tried to appease proponents and critics of affirmative action by announcing a confusing standard that race can be taken into account in a flexible but not quota-like way."

In response to the question asking students to compare and contrast "the conception of the president's role with regard to foreign affairs expressed in *United States v. Curtiss-Wright Export Corp.* with the conception of the Supreme Court's role expressed in *Cooper v. Aaron*," Charles wrote: "Both envisioned an exclusive role in their own domain. *Curtiss-Wright* envisioned the President as being the "sole organ" of the federal government in foreign affairs, while the Supreme Court saw the judiciary as the only body which can interpret the Constitution and say what the law means."

To take one final example, one of these questions asked the students to compare and contrast "Justice Scalia's view of Article II's Vesting Clause expressed in *Morrison v. Olson* with Justice Scalia's view of Article I's Vesting Clause expressed (implicitly) in *Whitman v. American Trucking Ass'n Inc.*" Charles wrote in reply: "They contradict one another. Scalia believes the vesting clause in Article II vests all executive power in the President, but clearly does not believe Article I's vesting clause vests all legislative

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power in Congress. This is shown by the fact that he approved of a legislative delegation to an administration agency with an extremely vague intelligible principle in Whitman.”

In sum, Charles’s answers to the compare-and-contrast portion of the Constitutional Law exam were well-written, economical (as the students had only about 50 words with which to answer each question), analytically sophisticated, and displayed impressive mastery of the course materials.

I emailed Charles after submitting my Constitutional Law grades (which enables me to “unblind” the exams and discover which students received which grades): “I wanted you to know, though I’m not sure if it will make you feel better or worse, that you wrote a terrific exam and would have received a DSP had I been able to award just one more of them. Great job!” Charles responded with characteristic good grace: “Hope all is well with you too and thank you so much for writing to let me know this. It honestly means a lot: I have been struggling with a bit of imposter syndrome since transferring here so this helps me feel a lot more like I belong here.”

That Charles would be suffering from “imposter syndrome” (which is not uncommon among our transfer students or, indeed, 1L students who graduated from less elite colleges) is laughable given his stellar academic performance during his 1L year at George Washington University School of Law, where he received essentially straight “A”s. In any event, Charles quickly proved that he is no “imposter” at Harvard, earning all Honors grades in his courses last fall.

When Charles volunteered to do research for me this past semester, I jumped at the opportunity to hire him. I am in the early stages of writing a book about race and sports in American history, and I sometimes use my research assistants to read and summarize for me books that are relevant to the project but not so indispensable that I need to read them myself. Charles read and wrote me a memo on a book entitled *Race Horse Men: How Slavery and Freedom Were Made at the Racetrack* (2014), by Katherine Mooney. Here are the instructions I gave Charles with regard to the book:

I’d like you to start by reading the introduction and just perusing the first couple of pages of each chapter and then report back to me what seem to be the main themes of the book. Then I’ll give you additional instructions.

What I know about the subject is this: During the Reconstruction era and probably through most of the rest of the 19th century, African American jockeys dominated horse racing generally and the Kentucky Derby in particular. Then they were essentially eliminated from the sport, starting around the turn of the 20th century. I want to know when, why, and how. Something similar happened to black skilled workers in the North—e.g., chefs, barbers, waiters. They were mostly replaced by European immigrants.

In the South, sometimes violence was used in this process—e.g., with railroad firemen. When whites decided they wanted these jobs, in the 1910s, they often just murdered blacks who would not give them up.

Why did trainers and owners agree to displace black jockeys who had been so successful? Who replaced them? Was there some sort of collusion involved? What did the black jockeys do to try to fight back? Why were they unsuccessful?

In your final memo, I will want you to give me any especially good quotes, as well as describing the themes of the book. It’s important to note page numbers liberally so I can check out what most interests me myself. Feel free to just say, read pages x–y yourself; too much there to summarize. Also include anything you find interesting yourself. I have my own ideas but am always curious to see what my bright and able RAs find new and exciting.

It is unlikely this book is the best place to find descriptions of the general context of race relations. I already know a lot about this. But if the author relates stuff going on in horse racing to parallel developments in other sports (e.g., I know blacks were kicked out of professional baseball in the 1880s), please tell me that as well.

You should also note primary sources for a particularly interesting topic, in case down the road I want someone to collect those sources for me. Interesting-looking secondary sources would also be good (e.g., a book on blacks being kicked out of bicycling associations around the same time, which I believe happened).

Let me reproduce for you a few paragraphs from the memo that Charles wrote in response. As you will see, these paragraphs demonstrate an ability to write and think clearly, to summarize precisely, as well as discerning judgment with regard to what qualifies as a choice quotation.

Summary of *Race Horse Men*

Race Horse Men “tells the story of the American racetrack and the white and black men who made their lives on it for almost a century from the Jacksonian period to the eve of World War I” (p. 3). The author – Katherine Mooney – emphasizes how horse racing quickly became an indispensable part of colonial life after the British built the first racetrack in New York in the 1660s and continued to profoundly shape the lives of both white and black Americans throughout the antebellum era. (3-4)

Upper class white men who invested in the sport “coined the name ‘turfmen’ for themselves, adopting it as a title of rightful authority both on and off the track” (5). “To be a turfman was not merely to be rich; it was to be a gentleman worthy of respect in the most select circles for savvy and judgment, grace and style. It was to be marked with the right to rule” (5).

For African Americans in bondage, horseracing provided an opportunity to exercise a remarkable degree of autonomy. White people in the colonial era trusted African Americans to take care of their horses because “Africans had a well-deserved reputation for equine expertise in the Atlantic world” (6). Slaves quickly became instrumental to raising and training horses for their white masters, allowing them to enjoy “many of the conventional signifiers of freedom – the ability to move without impediment, to exercise some control over their employment, to offer opinions that might well be heeded” (9). Still, white owners did not view them as full human beings: “They recognized these black men as competent professionals and often as congenial companions. But they only saw black horsemen in relation to themselves; they could hardly imagine them with lives

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